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IN THE

**United States Circuit Court of Appeals
For the Seventh Circuit**

No. 6324

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

COLUMBIAN ENAMELING AND STAMPING
COMPANY, INC.,
Respondent.

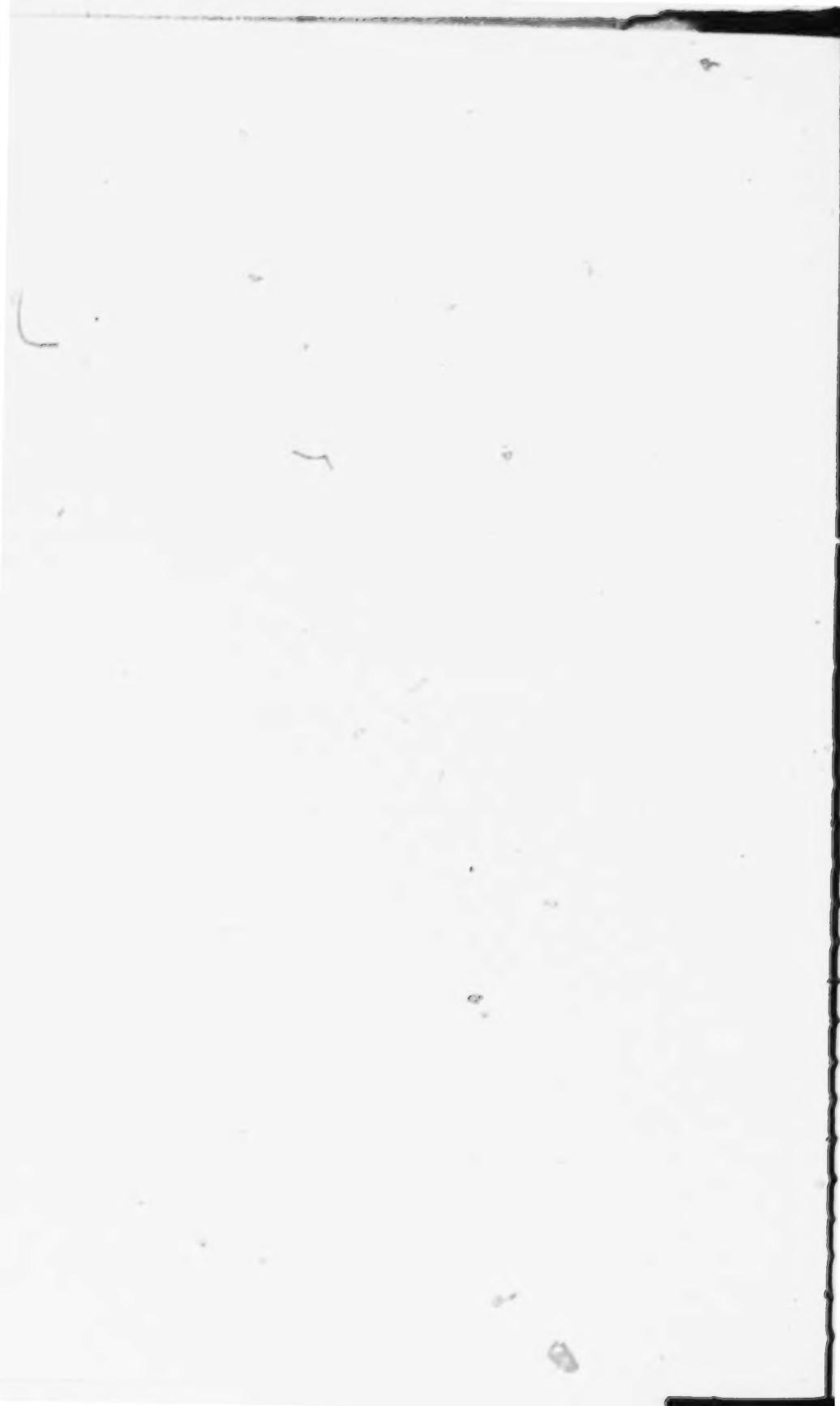
Counsel for Petitioner:

MR. CHARLES FAHY.
MR. ROBERT B. WATTS.

Counsel for Respondent:

MR. EARL F. REED,
MR. JOHN E. LAUGHLIN, JR.,
MR. OTTO A. JABUREK.

Petition for Enforcement of Order of the National Labor Relations Board.



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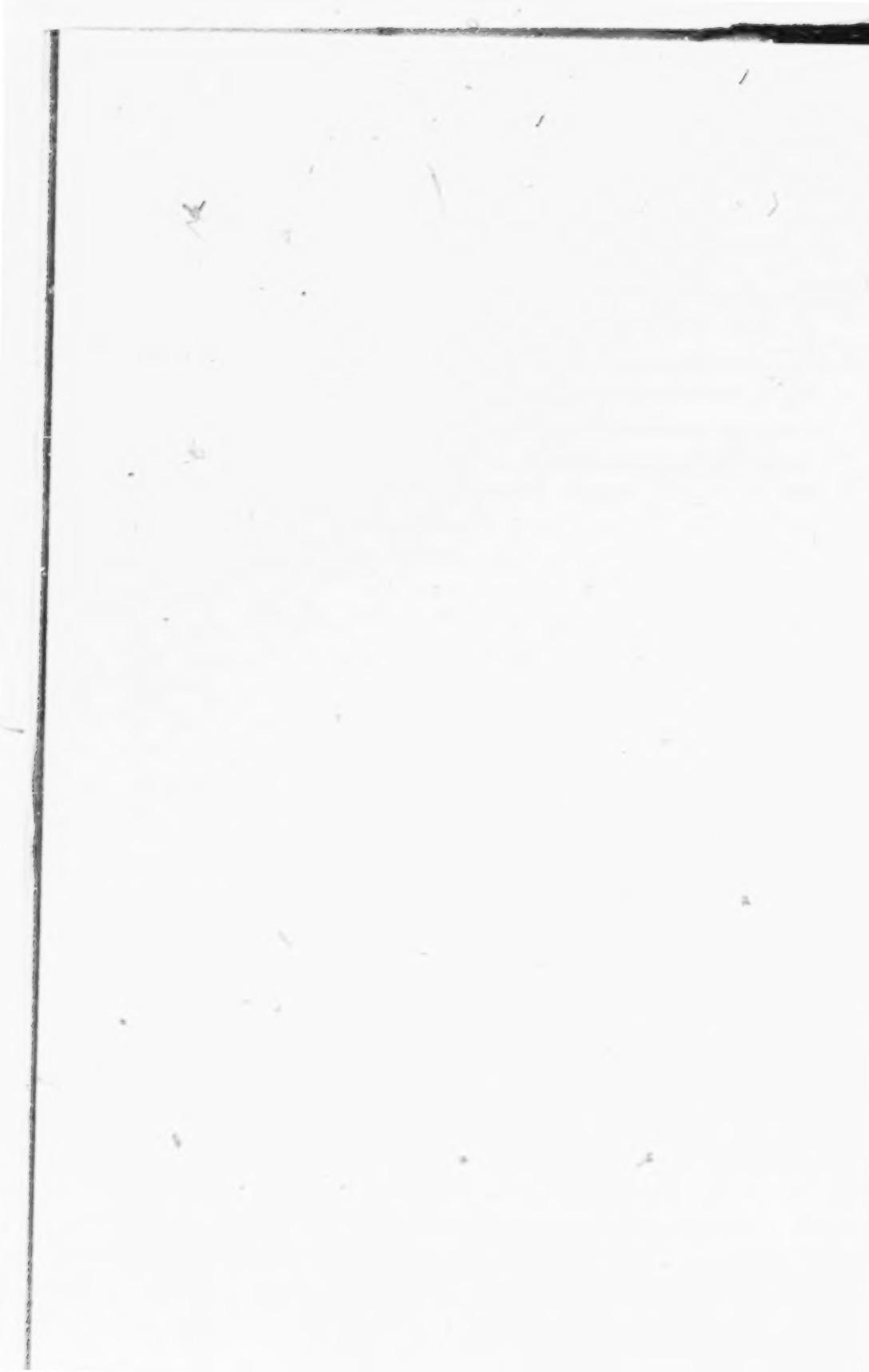
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IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

Filed J
1937.

For the Seventh Circuit.

October Term, 1936.

National Labor Relations Board,
Petitioner,
vs.
Columbian Enameling & Stamping
Co., Inc.,
Respondent.

} 6324.

**PETITION FOR THE ENFORCEMENT OF AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD.**

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

The National Labor Relations Board, hereinafter referred to as the Board, pursuant to the authority conferred upon it by the provisions of an Act of Congress approved July 5, 1935 (49 Stat. 449, C. 372, 29 U. S. C. A. sec. 151 *et seq.*), known as the National Labor Relations Act, respectfully petitions this Honorable Court for the enforcement of a certain order issued by said Board in a proceeding instituted by it against respondent, Columbian Enameling & Stamping Co., Inc. Said proceeding is known upon the records of the Board as Case No. C-14, the title thereof being "In the Matter of Columbian Enameling & Stamping Company and Enameling & Stamping Mill Employees Union, No. 19694."

In support of this petition, the Board respectfully shows:

(1) Respondent is and at all times hereinmentioned was a corporation organized under and existing by virtue of the laws of the State of Indiana and has and maintains its main office and transacts its principal business in the City of Terre Haute, County of Vigo, State of Indiana.

(2) By reason of the matters alleged in paragraph (1) hereof, this Court has jurisdiction of this petition by virtue of section 10(e) of the said National Labor Relations Act.

(3) A charge was duly filed with the Board by the Enameling & Stamping Mill Employees Union, No. 19684, on the 31st

2 Petition for Enforcement of Order of N. L. R. B.

day of October, 1935. Thereafter, on the 21st day of November, 1935, the Board issued its complaint in said proceeding No. C-14, charging that the respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which said complaint, together with a notice of hearing thereon, was duly served upon the respondent. Thereafter, on December 2, 1935, the respondent duly filed its answer.

(4) Thereafter, on December 9, 10 and 11, 1935, the Board by a Trial Examiner, duly held hearings upon the charges stated in said complaint, pursuant to due notice thereof. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to both parties. The respondent moved to dismiss the complaint. The motion was denied by the Trial Examiner and an exception was thereupon taken. The motion was renewed at the conclusion of the hearing and again denied.

(5) Thereafter, on December 16, 1935, the Board, acting pursuant to its Rules and Regulations, Series V, Article II, sec. 35, directed that the proceeding be transferred to and continued before it. At said hearing before the Board no additional evidence was adduced by either party.

(6) Thereafter, on December 19, 1935, the Board granted the respondent's request made at the time of the hearing to file briefs with the Board within 15 days. By proper motion duly made on December 24, 1935, the respondent moved that the time within which it might file its brief in the proceeding be extended to and including January 11, 1936. The Board granted the motion and so notified the respondent on December 28, 1935. Pursuant to such notice, the respondent thereafter filed its brief with the Board on January 11, 1936. The complainant Union also filed a brief with the Board on January 16, 1936.

3 (7) Thereafter, on February 14, 1936, the Board having duly considered the matter and being sufficiently advised in the premises and being of the opinion upon all the testimony and evidence that the respondent had been and then was engaged in certain unfair labor practices affecting interstate commerce within the meaning of said National Labor Relations Act, duly stated its findings and issued and entered the following order directed to the respondent:

“Order.

“On the basis of the findings of fact and conclusion of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, the Columbian Enameling & Stamping Company, and its officers and agents, shall take the following action, which the Board finds will effectuate the policies of the Act:

“1. Discharge from its employment all production employees who were not employed by it on July 22, 1935, and reinstate to the vacancies so created individuals who were so employed and have not since received substantially equivalent employment elsewhere and place the remainder of such individuals on a list to be called for reinstatement as and when their labor is needed.

“2. Upon reinstating its employees as required in paragraph 1 of this order, shall cease and desist from refusing to bargain collectively with Enameling & Stamping Mill Employees Union, No. 19694 as the exclusive representative of the production employees employed by respondent in respect to rates of pay, wages, hours of employment and other conditions of employment.

“3. File with the National Labor Relations Board on or before the thirtieth day from the date of service of this Order, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.”

(8) Said order is, and at all times since its issuance has been, in full force and effect.

(9) Thereafter, on February 14, 1936, said order was served upon the said respondent by sending a copy thereof postpaid, Government frank, by registered mail to respondent's attorney in Chicago, Illinois.

(10) Respondent has failed to comply with said order of the Board heretofore set forth in paragraph (7) hereof and has failed to indicate any intention to comply therewith
4 and the Board accordingly alleges that respondent will not comply therewith unless and until required so to do by this Court.

Wherefore, the Board petitions this Honorable Court for the enforcement of its order of February 14, 1936; and, pursuant to section 10(e) of said National Labor Relations Act,

4 *Petition for Enforcement of Order of N. L. R. B.*

is certifying and filing with this Court a transcript of the entire record in the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact and said order of the Board.

The Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in such transcript and upon the order made thereon a decree enforcing in whole said order of the Board and requiring respondent, its officers, agents and representatives to comply therewith.

Dated at Washington, D. C., this 26th day of June, 1937.

s/ J. Warren Madden,
J. Warren Madden,
Chairman,

s/ Edwin S. Smith,
Edwin S. Smith,
Member,

s/ Donald Wakefield Smith,
Donald Wakefield Smith,
Member, National Labor Relations Board.

s/ Charles Fahy
by Robert B. Watts,
Charles Fahy,
General Counsel, National Labor Relations Board, Washington,

s/ Robert B. Watts,
Robert B. Watts,
Associate General Counsel, National Labor Relations Board, Washington.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
• • (Caption—6324) • •

Filed Ag
1937.

ANSWER OF THE RESPONDENT COLUMBIAN
ENAMELING & STAMPING CO., INC. TO THE PETI-
TION OF THE NATIONAL LABOR RELATIONS
BOARD.

To the Honorable Judges of the United States Circuit Court
of Appeals for the Seventh Circuit:

Now comes the respondent, Columbian Enameling & Stamping Co., Inc., by its attorneys, and for its answer to the petition of the National Labor Relations Board for the enforcement of an order of said Board, respectfully shows and alleges:

1. The Order of the petitioner, dated February 14, 1936, which the petitioner is asking this Honorable Court to enforce, was and is contrary to law, void and of no effect, for the following reasons, among others:

- (a) The petitioner had no jurisdiction over the respondent.
- (b) The petitioner had no jurisdiction over the subject matter of the proceedings in which said Order was made.
- (c) The petitioner's Conclusions of Law, upon which said Order was based, are erroneous.
- (d) The petitioner's Findings of Fact, upon which said Order was based, are not supported by the evidence.

(e) The transactions, which were the subject matter of the proceedings before the petitioner in which said Order was made, occurred prior to the enactment of the National Labor Relations Act, and said Order is illegal and invalid, in that it purports to give retroactive effect to said Act.

2. On March 23, 1935, prior to the enactment of the National Labor Relations Act, approximately four hundred and fifty persons, who had theretofore been employed by the respondent, voluntarily terminated their employment with the respondent and joined in a walk-out against it. Said walk-out was instituted and maintained for the sole purpose of compelling the respondent to accede to a demand made by the Enameling and Stamping Mill Employees' Union No. 19694, of which the persons engaging in said walk-out are claimed to have been members, for a closed shop, and was called and maintained in violation of an agreement entered into on July

14, 1934 by and between the respondent, the said Union and the then existing Indianapolis Regional Labor Board, and which agreement, as subsequently amended, did not expire until July 14, 1935, and, among other things, provided against discrimination because of "membership in or non-membership in, affiliation with or non-affiliation with any union or labor organization." Shortly after said walk-out was instituted, as aforesaid, respondent temporarily discontinued the operation of its manufacturing plant and subsequently resumed operations thereof and has since continued such operations in a peaceful and satisfactory manner. Since the resumption of operations, as aforesaid, respondent has employed, and continues to employ, a sufficient number of workers to insure the orderly and satisfactory operation of its business.

3. Said order of the National Labor Relations Board in paragraph 1 thereof directs the respondent to discharge a large number of its present employees, who have been employed since said walk-out was instituted, for the purpose of creating vacancies for approximately two hundred and fifty of the approximately four hundred and fifty former employees who voluntarily left its employment in March, 1935, as aforesaid, and who had failed and refused to return to such employment after having been invited so to do by the respondent, both in and by a newspaper announcement published on June 7, 1935, and also in a meeting held on June 11, 1935 between representatives of said union and representatives of the respondent, the remaining two hundred of said approximately four hundred and fifty former employees having accepted such invitation and returned to the respondent's employment.

4. The enforcement of said order of the National Labor Relations Board would require the respondent to discharge without any just cause approximately two hundred and fifty loyal employees who were employed by the respondent prior to the date of said Order and who have performed their work at all times in a satisfactory and efficient manner to make positions for those who had joined in said walk-out in March, 1935, as aforesaid, and who had refused and failed to return to their said employment with the respondent, when invited so to do on June 7 and June 11, 1935, also as aforesaid. The employees who were employed by respondent prior to the date of said Order have an interest in their employment relations with the respondent, but have not been given an op-

Answer of Respondent.

4c

portunity to be heard or represented in these proceedings. The enforcement of said Order at this late date would unjustly and inequitably deprive them of their lawful right to employment by the respondent without any hearing or other legal process and would seriously injure and interfere with the respondent's operation of its business.

5. Respondent asserts that the National Labor Relations Board should be deemed and adjudged to have abandoned said cause by reason of the delay in filing the petition for the enforcement of the Order entered therein and that the enforcement of said Order is barred by the long lapse of time occurring between the entry thereof and the filing of the petition for the enforcement thereof, during which period the respondent has entered into and continued employment relations with other persons, which relations cannot be terminated without great injury to the respondent and such other persons.

Columbian Enameling & Stamping Co.,
Inc.,

Respondent,
By Werner H. Grabbe,
Vice President.

Earl F. Reed,
John E. Laughlin, Jr.,
Otto A. Jaburek,
Attorneys for Respondent.

State of Indiana { ss.
County of Vigo } ss.

Werner H. Grabbe, being first duly sworn, upon oath deposes and says that he is Vice President of Columbian Enameling & Stamping Co., Inc., the within named respondent, and the duly authorized agent of said respondent to make this affidavit on its behalf; that he has read the foregoing answer by him subscribed and has knowledge of the facts therein set forth, and that the statement of facts therein is true to the best of his knowledge and belief.

Werner H. Grabbe.

Subscribed and sworn to before me this 11th day of August, A. D. 1937.

(Seal)

R. M. Archer,
*Notary Public in and for Vigo
County, Indiana.*

My Commission Expires June 1, 1938.

Endorsed: In the United States Circuit Court of Appeals.
• • (Caption—6324) • • Answer of the Respondent Columbian Enameling & Stamping Co., Inc. to the Petition of the National Labor Relations Board. Filed Aug. 13, 1937. Frederick G. Campbell, Clerk. Otto A. Jaburek, 35 East Wacker Drive, Chicago, Illinois. Earl F. Reed, John E. Laughlin, Jr., Thorp, Bostwick, Reed & Armstrong, 2812 Grant Building, Pittsburgh, Pa. Attorneys for Respondent.

5 District of
Columbia, } ss.

J. Warren Madden, Edwin S. Smith and Donald Wakefield Smith, First being duly sworn, depose and say that they are chairman and members, respectively, of the National Labor Relations Board and make this affidavit on behalf of said Board; that they have read the foregoing petition and have knowledge of the facts stated therein; and that the statements made in the foregoing are true to their best knowledge and belief.

s/ J. Warren Madden,
s/ Edwin S. Smith,
s/ Donald Wakefield Smith.

Subscribed and sworn to this 26th day of June 1937, before me.

(Seal) s/ Harold G. Wilson,
Notary Public, District of Columbia.

My commission expires May 15, 1941.

(Endorsed) Filed Jul 9 1937. Frederick G. Campbell,
Clerk.

6

UNITED STATES OF AMERICA.

Before the National Labor Relations Board.

Eleventh Region.

In the Matter of
Columbian Enameling & Stamping } Case No. XI-C-7.
Co and Enameling & Stamping }
Mill Employees Union #19694.

CHARGE.

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Columbian Enameling and Stamping Company, Terre Haute, Indiana, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3), (5) of said

Act, in that on or about the 14th day of June, 1934, the employees of the Columbian Enameling and Stamping Co. organized the Enameling and Stamping Mill Employees Union #19694; that said organization entered into an agreement with the said company; That some time prior to March 22, 1935, a dispute arose between the employees and the company concerning the application of the agreement, which dispute resulted in the employees coming out on strike on March 23, 1932; that the strike has been continuous and is in progress at the time; That said strike affects the flow of commerce within the meaning of said act; That subsequent to July 5, 1935, the company endeavored to get certain of its employees to return to work in said company's plant, and by its agents informed said employees that unless they returned to work immediately they would cease to be considered as employees and would not be permitted to return to work for said company; That the said company is now informing its employees on strike that they may file application for employment but with the understanding that there shall be no union of its employees; That the said company has, and is now, refusing to meet with and negotiate with the duly qualified representatives of the Enameling and Stamping Mill Employees Union #19694; That said company has at all times, and is now, refusing to bargain collectively with its employees' representatives; That the members of Enameling and Stamping Mill Employees Union #19694 are employees within the meaning of the term "employee" as defined by Section 2, subsection 3, of the National Labor Relations Act.

I, Robert H. Cowdrill, Regional Director of the National Labor Relations Board, certify this to be a true copy of the charge in the matter of Columbian Enameling and Stamping Co. and Enameling and Stamping Mills Employees Union #19694.

Robert H. Cowdrill,
Robert H. Cowdrill,

*Regional Director National Labor
Relations Board Eleventh Re-
gion.*

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making

the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Otis Cox,
*Secretary Enameling and Stamping
Mill Employees Union, #19694—415
N. 14th St.—Terre Haute, Ind.*

Subscribed and sworn to before me this 31st day of October, 1935.

Robert H. Cowdrill.

(Endorsed) National Labor Relations Board Case No. XI-C-7 (Board) Exhibit No. 2. In the Matter of Col. Enamel. Date 12/9/35 Witness _____ Smith & Hulse, Official Reporters, by Shipley.

7 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * * (Caption—XI-C-7) * *

COMPLAINT.

It Having Been Charged by the Enameling & Stamping Mills Employees Union #19694, Terre Haute, Indiana, hereinafter called the Union, that the Columbian Enameling and Stamping Company, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Eleventh Region, as agent of the National Labor Relations Board designated by National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, hereby alleges the following:

1. The respondent is and has been since June 3, 1901, a corporation organized under and existing by virtue of the laws of the State of Indiana, having its principal office and place of business in the City of Terre Haute, County of Vigo, and State of Indiana, and is now and has continuously been engaged at a place of business in the City of Terre Haute, County of Vigo, State of Indiana, (hereinafter called the Terre Haute Plant) in the production, sale and distribution of enamel ware for household, hospital and medical use.

2. The respondent in the course and conduct of its business

Complaint.

causes and has continuously caused a great part of the raw materials used in the production of its enamel ware to be purchased and transported in interstate commerce from and through states of the United States other than the State of Indiana to the Terre Haute Plant in the State of Indiana, and causes and has continuously caused a great part of the enamel ware produced by it to be sold and transported in interstate commerce from the Terre Haute Plant in the State of Indiana to, into and through states of the United States other than the State of Indiana, all of the aforesaid constituting a continuous flow of trade, traffic and commerce among the several states.

3. The Union is a labor organization composed of employees in the production departments in the Terre Haute Plant, formed for the purpose of collective bargaining between the employees and the respondent and for other mutual aid in their dealings with the respondent with respect to the conditions of their employment.

4. All the departments at the Terre Haute Plant of the respondent with the exception of the office and clerical departments constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of said Act.

5. On or before March 22, 1935, and at all times thereafter mentioned herein, a majority of the employees in said unit had designated the union as their representative for the purposes of collective bargaining with the respondent, such designation having been made by becoming members of the Union and appointing a committee of Union members to bargain with the respondent. At all times since March 22, 1935, said Union has been the representative for collective bargaining of a majority of the employees in said unit and has by virtue of Section 9(a) of said Act, been the exclusive representative of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

6. On July 22, September 20, and October 11, 1935, while the respondent was engaged at the Terre Haute Plant as described above, the Union requested the respondent, through its officers, agents and employees to bargain collectively in respect to rates of pay, wages, hours of employment, and other conditions of employment, with the Union as the representative of the employees who are members of the Union and as the exclusive representative of all the employees in

said unit. On said dates and at all times thereafter the respondent did refuse and has refused to bargain collectively with the Union as the representative of the employees who are members of the Union or as the exclusive representative of all the employees in said unit, in that it refused to meet, for the purpose of collective bargaining or any other purpose, with the committee of the Union designated by the Union to engage in collective bargaining.

7. Said acts of the respondent constitute unfair labor practices within the meaning of Section 8, subdivision (5) of said Act.

8. On or about March 22, 1935, the Union duly voted to call a strike of the employees in the Terre Haute Plant of the respondent and since that date and at all times thereafter mentioned herein the employees who are members of the Union and other employees have been on strike. The Union has not since March 22, 1935, or at any time thereafter voted to cease such strike or to return to employment at the Terre Haute Plant. On many occasions since July 5, 1935, the respondent through its officers and agents has solicited individual employees who are members of the Union to return to employment, has threatened such employees with permanent discharge if they did not so return to employment immediately, and has informed such employees that there would never henceforth be a Union in the Terre Haute Plant and has attempted to induce and has induced many of such employees to return to employment at the Terre Haute Plant while at the same time refusing to bargain collectively with

the Union as set forth hereinabove. The acts alleged in
9 this paragraph constitute an interference with the rights to self-organization and an unfair labor practice within the meaning of Section 8, subdivision (1) of said Act. The acts alleged in this paragraph constitute a refusal to bargain collectively with the representatives of the employees of the respondent and an unfair labor practice within the meaning of Section 8, subdivision (5) of said Act.

9. The aforesaid unfair labor practices occur in commerce among the several states, and on the basis of experience in the aforesaid plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof, and have led and lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

10. The aforesaid acts of respondent constitute unfair labor practices affecting commerce within the meaning of Section

Notice of Hearing.

8, subdivisions (1) and (5), and Section 2, subdivisions (6) and (7) of said National Labor Relations Act.

Wherefore, the National Labor Relations Board on the 21st day of November, 1935, issues its complaint against the Columbian Enameling and Stamping Company, respondent herein.

Notice of Hearing.

Please Take Notice that on the 9th day of December, 1935, at 10:00 o'clock in the forenoon, in the Federal Court Room on the second floor of the Post Office Building, 7th and Cherry Sts., Terre Haute, Indiana, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series 1, Article IV, Section 2, and Article II, Section 22, on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Eleventh Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto, on or before the 29th day of November, 1935.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In Witness Whereof the National Labor Relations Board has caused this, its complaint and notice of hearing to be signed by the Regional Director for the Eleventh Region, on the 21st day of November, 1935.

Robert H. Cowdrill,
Robert H. Cowdrill,

Director for the Eleventh Region,
339 Architects Bldg.,
Indianapolis, Indiana.

I, Robert H. Cowdrill, Regional Director of the National Labor Relations Board, certify this to be a true copy of the complaint in the matter of Columbian Enameling & Stamping Co. and Enameling & Stamping Mills Employees Union, #19694.

Robert H. Cowdrill,
Robert H. Cowdrill,

Regional Director National Labor Relations Board, Eleventh Region.

10 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
• • (Caption—XI-C-7) • •

THE ANSWER OF COLUMBIAN ENAMELING &
STAMPING CO., INC., A CORPORATION, RESPOND-
ENT.

This respondent, Columbian Enameling & Stamping Co., Inc., a corporation, answering the complaint heretofore filed against it in this cause, says as follows:

1. That the National Labor Relations Act is unconstitutional and void in that it is violative of the Fifth Amendment to the Constitution of the United States, which, in part, reads as follows:

"No person shall be • • • deprived of life, liberty, or property without due process of law; • • •"

2. That this respondent is not engaged in interstate commerce; that it is engaged in the production (or manufacture) of enamel ware, as set forth in said complaint; that said production (or manufacture) is not interstate commerce, and that said National Labor Relations Act, as applied to it and its business, is unconstitutional and void, and respondent denies that its production (or manufacturing) operations constitute or are in a continuous flow of trade, traffic, and commerce.

3. Respondent denies that said union is composed of employees in the production departments of respondent's plant. Respondent is without knowledge as to the purposes for which said union was formed, but says that on a number of occasions prior to March 23, 1935, certain of respondent's then employees bargained collectively with it through certain of the representatives of said union.

11 4. Respondent says it is without knowledge as to what constitutes an appropriate unit for the purposes of collective bargaining in its said plant within the meaning of Section 9 (b) of said Act; but denies that the same is material in this cause.

5. Respondent says that it is without knowledge as to whether or not a majority of the employees in its said plant on or before March 22, 1935, had designated said union as their representative for the purpose of collectively bargaining with it, or of the manner in which said alleged designation was

made, but says that prior to said date this respondent did bargain collectively with its then employees through said union; but respondent denies that at all times since March 22, 1935, said union has been the representative for collective bargaining of a majority of the employees in its said plant, and denies that at all times since said date said union has been the exclusive representative for collective bargaining of all of the employees in its said plant, and denies that said union has been the representative for collective bargaining of any of respondent's employees since said date.

6. Respondent denies that it refused to bargain collectively with any of its employees through their chosen representative, or representatives, upon the dates mentioned in paragraph numbered 6 of said complaint, or at any time after said dates, and denies that any of its employees requested it to bargain with them collectively through any representative, or representatives, on said dates, or at any time thereafter, in respect to rates of pay, wages, hours of employment, or any other conditions of employment.

7. Respondent is without knowledge as to whether or not said union duly voted to call a strike in its said plant, but says that such a strike was instituted against it on March 23, 1935. Respondent is without knowledge as to whether or not said union has voted to cease said strike, but says that during the latter part of July, 1935, and during the fore part of August, 1935, it afforded all of said strikers who had quit its employment and joined in said strike an opportunity to return to its employment without discrimination, and had asked a large number of said strikers to so return to its employment, and that a large number of said strikers did return to its em-

ployment, said opportunity to so return to its employ-
12 ment, and said request to so return, was made without
any reference to membership or non-membership in said
union or in any other labor organization, and respondent de-
nies that its said action is a violation of said Act; respondent
denies that it threatened any of said strikers as set forth in
paragraph numbered 8 of said complaint or in any other man-
ner.

8. Respondent denies that any act committed, or authorized by it is a violation of said Act, and denies that in its dealings at any time with any of its employees, or with said strikers, it violated said Act, and denies that any act complained of against it burdened or burdens, or obstructed or obstructs commerce and the free flow thereof, or led or leads to any

labor dispute or disputes burdening and obstructing such commerce and the free flow thereof.

9. Further answering, respondent says that on July 14, 1934, it entered into a written agreement with said union and the then Indianapolis Regional Labor Board covering terms and conditions of employment in its said plant for a period of one year from the date thereof; a copy of said agreement is hereto attached, marked Exhibit "A" and made a part hereof, the same as though fully incorporated herein; that said union, contrary to the provisions of said agreement, at various times after its execution and prior to March 23, 1935, demanded certain changed conditions, including the layoff of employees, members of said union, who had been suspended by it, and a demand for the closed shop, and culminating in a notice to the respondent on March 17, 1935, that the members of said union employed by respondent refused to continue to work with anyone eligible to membership in said union who did not show a willingness to become a member on or before March 23, 1935, and on said last mentioned date instituted a strike against respondent, as aforesaid; that during said period between July 14, 1934, and March 23, 1935, said union, through certain of its officers and members, disseminated, or caused to be disseminated, certain misinformation with reference to the failure of respondent to pay for time lost due to breakage of machinery, when, as a matter of fact, said agreement contains no provision requiring respondent to do so; also, misinformation regarding respondent's attitude toward the arbitration of certain demands which did not arise or grow out of said agreement and were therefore not subject to arbitration, all for the purpose and with the effect of disturbing the morale existing in respondent's said plant and creating a spirit of unrest and tension among respondent's employees; that after said strike had been instituted, respondent's plant was picketed by said union and many other persons, that a riot ensued on or about June 15, 1935, when certain watchmen were moved into said plant, and said plant was raided by many of those engaging in said picketing and in said riot and damage done to said plant and equipment to the extent of at least Twenty-five Thousand Dollars (\$25,000.00); that on or about July 19, 1935, respondent began preparations for reopening said plant and that thereupon the number of pickets who had engaged in picketing continuously was greatly increased and further damage to said plant was done; that employees engaged in reopening said plant were intimidated and threatened

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ing in respondent's said plant and creating a spirit of unrest and tension among respondent's employees; that after said strike had been instituted, respondent's plant was picketed by said union and many other persons, that a riot ensued on or about June 15, 1935, when certain watchmen were moved into said plant, and said plant was raided by many of those engaging in said picketing and in said riot and damage done to said plant and equipment to the extent of at least Twenty-five Thousand Dollars (\$25,000.00); that on or about July 19, 1935, respondent began preparations for reopening said plant and that thereupon the number of pickets who had engaged in picketing continuously was greatly increased and further damage to said plant was done; that employees engaged in reopening said plant were intimidated and threatened

and otherwise interfered with by said pickets, and the re-opening thereof was otherwise impeded. As a result martial law was declared in Vigo County, in which respondent's plant is located, and National Guard troops were sent to said City of Terre Haute. Said plant resumed operations on July 25, 1935, and has continued in operation since. After about a week's occupancy most of the National Guard troops were removed, but a detail still remains at respondent's plant and martial law is still in force in said County. When said plant resumed operations, as aforesaid, all strikers who had quit respondent's employment and joined in said strike were afforded an opportunity to return to their former employment with it as aforesaid. During the period between July 23, 1935, when said plant resumed operations, as aforesaid, and August 19, 1935, all strikers who so applied for employment were re-employed without discrimination; that during said period from 1500 to 2000 other persons who had theretofore not been employed by respondent also applied for employment with it, but, in spite of such large number of said latter applicants respondent nevertheless during said period gave said strikers a preference and employed all of those who applied for re-employment, as aforesaid; that on the said last mentioned date respondent had filled all available places in said plant so that thereafter it has had no vacancies therein, except such as have been caused by the ordinary turnover of labor; that thereupon the strike against respondent ceased to exist.

10. Further answering, respondent says that the strike instituted against it, as aforesaid, was an unlawful strike
14 for an unlawful purpose and in violation of said agreement entered into in good faith by the respondent at the suggestion and request of the then Indianapolis Regional Labor Board; that those who joined in said strike and quit respondent's employment for the reasons and purposes and under the conditions aforesaid, then and there ceased to be employees of respondent when said strike was instituted, as aforesaid, and only those of said strikers who thereafter re-entered its employment became employees again; that none of those who entered, or who resumed employment with respondent on and after July 23, 1935, as aforesaid, have made any request upon respondent that it bargain collectively with them regarding terms and conditions of employment through any representatives chosen by them.

11. Respondent further says that after it had been operating approximately two months after such resumption, to-

wit, on or about September 20, 1935, during the latter half of which period it had operated with a full force, and again approximately three weeks later, to-wit, on or about October 11, 1935, requests were made by persons and in behalf of persons who were not employees of respondent for a meeting for the alleged purpose of ending, or seeking to end a controversy which had ceased to exist, as aforesaid.

Columbian Enameling & Stamping Co., Inc.

By C. B. Gorby,

President.

15½ & Beech Streets,
Terre Haute, Indiana.

State of Indiana } ss.
County of Vigo }

C. B. Gorby, being duly sworn, on oath deposes and says as follows:

I am President of the Columbian Enameling & Stamping Co., Inc., the respondent in the foregoing proceeding, and its duly authorized agent in this behalf. I have read the above and foregoing answer subscribed by me as such President, and know the contents thereof, and the same is true.

C. B. Gorby.

Subscribed and sworn to before me this 27th day of November, 1935.

Wilson N. Cox, Jr.,
Notary Public.

My Commission Expires July 6, 1939.

15

EXHIBIT "A".

July 14, 1934.

Case of—Columbian Enameling & Stamping Company, Inc.
and Its Employees.

At a meeting held in the offices of the Indianapolis Regional Labor Board on July 14, 1934, presided over by Dr. Earl R. Beckner, Chairman, the above parties agreed to the following contract:

(1) Seniority rights shall prevail throughout the plant. In the event that it becomes necessary to reduce the force of

employees, the last employee entered upon the Company's payroll shall be the first employee to be furloughed. No new employees shall be employed until all furloughed employees have been returned to work. In the recalling of furloughed employees for duty, the oldest employee in point of service shall be the first employee to be returned to duty. The seniority rule shall be applied on the basis of departments within the plant.

(2) Employees of either sex will be promoted upon the basis of competency. Management shall have the right to determine competency.

(3) No employees have been or will be discriminated against because of his or her membership in or non-membership in, affiliation with or non-affiliation with any union or labor organization.

(4) A rest-period shall be granted to all female laborers of ten minutes for every four hours of labor performed. This is to apply to all other departments where the rest-period is now practiced. Management will endeavor to work out a method of staggering rest-periods in order to avoid congestion in the restaurant.

(5) When either party to this agreement desires to terminate or modify this agreement, he shall give written notice to the other party at least thirty days in advance of such termination.

(6) In the event that it becomes necessary to reduce the amount of employment given, management agrees to spread the available work among all the employees. Management reserves the right to determine at what point it becomes necessary to lay off employees rather than spread the work.

(7) Any employee dismissed from the service of the Company shall be given a hearing within three days from date of dismissal, hearing to be conducted by representatives of the employee and the management. Should it be determined that the employee involved has been unjustly dismissed, such employee shall be restored to duty and paid for time lost.

(8) Management will endeavor to provide proper ventilation in the factory.

13) (9) Any employee required to report for duty at the beginning of his shift shall receive a minimum of two hours' pay. Same to be based on the established hourly rate of pay affecting said employee, any employee excepting employees on seven-day jobs, who is required to work on the following legal holidays including Sunday, shall receive time

and a half for hours of labor performed: New Year, Decoration Day, July 4th, Labor Day, Thanksgiving and Christmas.

(10) A committee representing employees in the various departments shall be privileged to take up any grievance that may arise in their respective departments with the foreman in charge of said department. Failing to adjust such grievance, the committee shall be permitted to refer the matter to the Department Superintendent, from him if necessary to the Plant Superintendent and finally to the General Manager of the Company.

In any case in which a satisfactory settlement of a dispute arising under this contract cannot be reached, such dispute shall be referred to a committee of arbitration composed of two persons selected by the Management, two persons selected by the Union, and fifth person to be selected by these four, who shall reach a decision which shall be final and binding upon both parties to this contract. There shall be no stoppage of work by either party to this contract, pending decision by the Committee of Arbitration.

(11) Wherever possible the management shall limit the hours of work to eight per day.

For the Enameling & Stamping Mill Employees Union No. 19694.

Elsie Payton,
V. Pres.
Otis A. Cox,
Fin. Sec'y.
M. G. Hener,
Treas.

Merle Badgers,
Ruth Badgers,
Claude H. Payton,
Ed. G. Morin.

For the Columbian Enameling & Stamping Company, Inc.
C. B. Gorby,

Prest.
Werner H. Grabbe,
Secretary.

For the Indianapolis Regional Labor Board.

Earl R. Beckner,
Chairman.

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July 14, 1934.

**Case of—Columbian Enameling & Stamping Company, Inc.
and Its Employees.**

In drafting the contract which was signed on July 14th, 1934, by the representatives of the company and of its employees one clause which had been agreed to was inadvertently omitted. The clause follows:

(12) This contract shall run for a period of one year from date, that is, until July 14, 1935.

It is agreed by the parties to the contract as originally drafted and signed on July 14, 1934, that the above clause be and hereby is made a part of the original contract and is to be appended thereto.

For the Enameling & Stamping Mill Employees Union No. 19694.

Elsie Payton,

V. Pres.

Otis A. Cox,

Fin. Sec'y.

M. G. Heuer,

Treas.

Merle Badders,

Ruth Badders,

Claude H. Payton,

Ed. G. Morin.

For the Columbian Enameling & Stamping Company, Inc.

C. B. Gorby,

Prest.

Werner H. Grabbe,

Secretary.

For the Indianapolis Regional Labor Board.

Earl R. Beckner,

Chairman.

17 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 3d day of December, 1935.

Present:

John M. Carmody

Edwin S. Smith.

* * (Caption—XI-C-7) *

ORDER DESIGNATING TRIAL EXAMINER.

A charge having been filed in this matter, and it having appeared to the Regional Director of the 11th Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It Is Hereby Ordered that Daniel M. Lyons act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

By direction of the Board:

Benedict Wolf,
Benedict Wolf.

Secretary.

(Seal)

18-20 * * (Cover and index) *

21 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—XI-C-7) *

Federal Court Room,
Post Office Building,
Terre Haute, Indiana.
Monday, December 9, 1935.

The above-entitled matter came on for hearing pursuant to Notice, at 10 o'clock a. m.

Before:

Daniel M. Lyons, Trial Examiner.

Appearances:

Melvin C. Smith, Attorney, on behalf of the National Labor Relation Board.

Maurice J. Nicoson, on behalf of Enameling & Stamping Mills Employees Union No. 19694.

Otto A. Jaburek, 35 East Wacker Drive, Chicago, Illinois, Josiah T. Walker, Terre Haute, Indiana, Louis R. Hiltteary, Terre Haute Indiana, and Wilson N. Cox, Terre Haute, Indiana, on behalf of Columbian Enameling and Stamping Company, Respondent.

PROCEEDINGS.

Trial Examiner Lyons: The judges of the United States Court request me to announce that the rules which ordinarily appertain to hearings before that Court will apply in the hearing in this case.

Consequently nothing in the nature of disorder will be tolerated and smoking will not be permitted. The officers will please see that no violation of those rules occur.

Will counsel please give their appearances to the reporter?

Mr. Smith: I think that has been done, Mr. Trial Examiner.

Trial Examiner Lyons: Then we are ready to proceed.

Mr. Smith: Will the Trial Examiner take notice of the rules and regulations of the Board?

Trial Examiner Lyons: Yes. Is there any objection to that procedure?

Mr. Jaburek: No.

Mr. Smith: I should like to introduce as Board's Exhibit No. 1 a certified copy of the charge made by the Enameling & Stamping Mills Employees Union No. 19694. And a certified copy of the complaint and a copy of the answer filed by the Columbian Enameling and Stamping Company.

Mr. Jaburek: Before the Trial Examiner passes on that, may we have entered into the record a motion to dismiss 23 this complaint first, on the ground that the Act is unconstitutional in that it is violative of the Commerce Clause of the Constitution; second, that it is violative of the Fifth Amendment to the Constitution; and thirdly, that the complaint fails to state a cause of action.

In support of that motion I would like to make a brief argument, if the Trial Examiner will permit.

Trial Examiner Lyons: Is there to be any reply argument?

Mr. Smith: How is that?

Trial Examiner Lyons: Is there to be any reply argument?

Mr. Smith: No reply argument, no.

(Argument by Mr. Jaburek, attorney for Respondent, followed at this point.)

Mr. Smith: Mr. Trial Examiner, I will not make any reply to the argument at this time.

Has Board's Exhibit 1 been admitted, Mr. Trial Examiner?

Mr. Jaburek: Could we have a ruling on the motion, please?

Trial Examiner Lyons: Well, you introduced the motion at the time when the charge and the complaint and answer were introduced as evidence. Technically, those are not before me until they are introduced.

24 If you will state your position on the introduction of these documents, I will be able to rule on your motion more intelligently.

Mr. Jaburek: Upon the introduction of the documents, you have those documents before you now, and I ask that the argument that I have made apply to the complaint as admitted, and we object to the consideration or introduction of the charge, which was the charge made by the union to the Regional Board, and upon which the complaint is predicated.

Trial Examiner Lyons: You object to the introduction of the charge, but do not object to the introduction of the complaint and the answer?

Mr. Jaburek: We do not object to the introduction of the complaint and the answer.

2 Trial Examiner Lyons: Well, the complaint and answer are admitted and will be marked Board's Exhibit No. 1.

(The Complaint and Answer referred to were, were received in evidence and marked BOARD'S EXHIBIT NO. 1.)

Mr. Jaburek: Now I would like a ruling on my motion.

Trial Examiner Lyons: The motion is denied subject to any rights you desire to save.

Do you wish your rights saved on the record?

Mr. Jaburek: I beg pardon!

Trial Examiner Lyons: Do you wish to save your rights on the record?

25 Mr. Jaburek: Oh, yes, we wish our rights saved upon the record.

Trial Examiner Lyons: Now, the question arises as to the admissibility of the Charge.

As the Act requires the Board or its agent to proceed upon a charge, I consider it essential to my jurisdiction of this case that the evidence of the charge be introduced.

And the charge is therefore admitted.

Mr. Jaburek: We want our objection noted.

Trial Examiner Lyons: Your objection will be noted. Proceed, Mr. Smith.

Mr. Smith: I should like to offer as BOARD'S EXHIBIT NO. 2 certified copy of the Articles of Association of the Columbian Enameling and Stamping Company.

Trial Examiner Lyons: On the question of numbering, in view of the fact that there were two separate rulings, I think the Charge had better be made Board's Exhibit No. 2, and this Board's Exhibit No. 3.

Mr. Smith: All right.

Trial Examiner Lyons: Is there any objection?

Mr. Jaburek: Well, we suppose they are our Articles of Association.

Trial Examiner Lyons: Have you seen them?

(The document was passed to counsel for Respondent.)

Trial Examiner Lyons: That will be admitted as 26 Board's Exhibit No. 3.

(The documents referred to were received in evidence as BOARD'S EXHIBIT NO. 2, and BOARD'S EXHIBIT NO. 3, respectively.)

Mr. Smith: I would like to offer certified copy signed by Walter Topping on behalf of the Columbian Enameling and Stamping Company, dated August 24, 1920, filed with the Trade-Mark Division of the United States Department of Commerce.

And also a certified photostatic copy of a declaration signed by Mr. Grabbe on behalf of the Columbian Enameling and Stamping Company, dated June 14, 1932, with the Trade-Mark Division of the United States Department of Commerce.

Trial Examiner Lyons: Has counsel seen them?

Mr. Smith: No, he has not.

(The documents were passed to counsel for the Respondent.)

Trial Examiner Lyons: Any objection on the part of counsel for the respondent?

Mr. Jaburek: No objection.

Trial Examiner Lyons: They may be admitted and marked Board's Exhibits Nos. 4 and 5.

(The documents referred to were received in evidence and marked respectively BOARD'S EXHIBITS NOS. 4 AND 5.)

Mr. Smith: Now I should like to offer as BOARD'S EXHIBIT NO. 6 a certified copy of statistics from the United States Department of Labor, Bureau of Labor Statistics, entitled "Strikes and Lock-outs in the Stamp and Enamelwear Industry in 1934, and in January to July, inclusive, 1935."

Mr. Jaburek: That is objected to as incompetent, irrelevant and immaterial. The question before this Examiner is whether or not sub-divisions 1 and 5 of Section 8 of the Act have been violated.

And this will not help to prove the issues or anything of the sort.

Trial Examiner Lyons: It seems to me this is relevant under the allegations of the complaint, and from its appearance I should say it is of sufficient value to make it competent before an administrative tribunal.

It will be admitted and will be marked Board's Exhibit No. 6.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 6.)

Mr. Smith: Mr. Griffiths, will you be sworn please.

C. E. GRIFFITH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Smith) Will you state your full name please?

A. C. E. Griffith.

Q. Where do you live, Mr. Griffith?

A. 1836 North 7th Street.

28 Q. Terre Haute?

A. Terre Haute, Indiana.

Q. And what is your position, Mr. Griffith?

A. Freight agent of the Big Four Railroad.

Q. Located in Terre Haute?

A. Located in Terre Haute.

Q. How long have you been in that position?

A. 20 years in Terre Haute.

Q. You are here in answer to a subpoena issued by the National Labor Relations Board?

A. Yes, sir.

Q. Now, Mr. Griffith, have you prepared a summary of the books as specified in that subpoena?

A. I made a copy of such documents as was required in that subpoena.

Q. You made copies?

A. Yes, sir.

Q. You have them with you?

A. Yes, sir.

Q. These are the copies?

A. Yes, sir.

Q. Now, Mr. Griffith, have you made any totals for the months, the various months, or have you just the copies?

A. I have them segregated into months.

Q. But you haven't made totals of each month?

29 A. Total of shipments?

Q. Yes.

A. No, sir.

Q. Then you have January, February, October and November of 1935 of outbound shipments made by the Columbian Enameling and Stamping Company, is that correct?

A. To the Big Four Railroad, or via the Big Four Railroad.

Q. Through the Big Four Railroad?

A. Yes, sir.

Q. And you have copies of all inbound shipments made during the year 1935 over the Big Four Railroad?

A. Well, for the months of January, February and November.

Q. Oh, I see, January, February and November?

A. For such other months we hadn't any shipments.

Q. Do these constitute all of the shipments then in January, February and November into the Columbian Enameling and Stamping Company by means of the Big Four Railroad?

A. Those were the months requested to supply or furnish.

Q. Yes. Were those copies made under your direct supervision, Mr. Griffith?

A. Yes, sir.

Q. Can you give an approximate estimate of the percentage of incoming shipments that arrived from points outside of the state of Indiana?

Mr. Jaburek: During what period?

30 Q. (By Mr. Smith) During the periods of January, February, October and November of 1935?

A. No, sir. I would not have that information.

Q. All of that information is clearly stated in these copies, is it not?

A. Yes, sir.

Mr. Smith: Mr. Trial Examiner, I should like to offer these copies as Board's Exhibit.

Trial Examiner Lyons: Are they objected to?

Mr. Jaburek: It does seem to me that we are cluttering up the record in a very magnificient state.

Mr. Smith: Nevertheless I think it is quite essential that we put in all information available concerning interstate shipments.

Trial Examiner Lyons: I think the evidence ought to be received. If there is any way in which it can be made less cumbersome by stipulation or otherwise, all right.

I would like to hear the evidence. Is there any objection to the authenticity or the fact that they are copies? If so, I would be glad to hear you on that.

Mr. Jaburek: As far as we know we believe the information contained therein is authentic, but we do question the advisability of sticking anything like this into the record.

Trial Examiner Lyons: Is there any way in which it could be condensed?

31 Mr. Jaburek: Yes, sir. By further examination—

Trial Examiner Lyons: It is apparently summarized according to the witness' statement. Of course I have no way of knowing how these records are kept. In fact, I do not know what is in them, but I assume counsel is introducing them because he believes that is the best way to put them in.

Mr. Smith: The only way I know that they could be condensed is to make totals of them, which has not been done, Mr. Examiner.

Trial Examiner Lyons: It would take considerable time to put this into any other different shape from what it is in?

Mr. Smith: Yes, it would.

Mr. Jaburek: Well, I am thinking of the cost of the transcript, both to the respondent and to the Union.

Trial Examiner Lyons: Well, I cannot keep out evidence just because it is cumbersome.

Mr. Jaburek: No.

Trial Examiner Lyons: I will admit them, and at some later time some stipulation may be arrived at as to how they can be incorporated into the record. I cannot keep them out merely because it is cumbersome.

Mr. Jaburek: No, we are agreed that it should be in the record.

Mr. Smith: If you wish to make a stipulation concerning those shipments—

32 Mr. Jaburek: If you will let me know what you want to stipulate to we will consider it and no doubt agree to anything that is fair and reasonable.

Trial Examiner Lyons: Suppose we admit them at the present time, and you gentlemen can get together on some stipulation which may dispense with some of the difficulties that have been suggested.

Now, it seems to me that that might be marked as one exhibit.

Mr. Jaburek: I think so, including so many.

Trial Examiner Lyons: Won't you make a note of how many pieces there are?

Mr. Jaburek: Five bound pieces.

Trial Examiner Lyons: Yes, and that will be marked Exhibit No. 7.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 7, Witness Griffith.)

Mr. Smith: I might add—

Mr. Jaburek: May I make one suggestion off the record?

Trial Examiner Lyons: Yes.

(Discussion off the record.)

Trial Examiner Lyons: The inbound will be Exhibit 7; and the outbound consisting of 4 pieces will be Exhibit 8.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT No. 8, Witness Griffith.)

33 Mr. Smith: I might add this is perhaps the only one of the transportation agencies that will have such a bulky record, Mr. Examiner.

Trial Examiner Lyons: I think it might be well for the record to show just exactly what the Big Four Railroad is. Everybody here knows, but someone may have to examine this record that does not know.

Q. (By Mr. Smith) What is the correct name of the Big Four Railroad?

A. Cleveland, Cincinnati, Chicago & St. Louis; part of the New York Central System.

Trial Examiner Lyons: And it has I suppose certain agencies in the city of Terre Haute where this plant is located.

Mr. Smith: Yes.

The Witness: Yes, sir.

Q. (By Trial Examiner Lyons) What has it up here?

A. Divided into yards and—

Q. So far as these documents are concerned?

A. Well, local freight office and station.

Q. At which these shipments which are the subject of these documents were received?

A. Yes, sir.

Q. And through which they were transmitted?

A. Yes, sir.

34 Trial Examiner Lyons: Is that a fair statement, gentlemen?

Q. (By Mr. Jaburek) That includes both from within the State of Indiana and the outside of the state?

A. Yes, sir.

Q. (By Mr. Smith) Did you look over the records of May, June and July—

A. I searched the records—

Q. (Continuing) —of the Columbian Enameling and Stamping Company of in and outbound shipments over the Big Four Railroad?

Did you find any shipments?

A. I did not, sir.

Mr. Smith: I think that is all.

Mr. Jaburek: No cross-examination.

Trial Examiner Lyons: That is all, Mr. Griffith.

(Witness excused.)

Mr. Smith: The Chicago & Eastern Illinois Railroad Company.

G. W. BATES, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Smith) Will you state your name please?

A. G. W. Bates.

35 Q. Where do you live, Mr. Bates?

A. 1312 South Center Street, Terre Haute, Indiana.

- Q. You are employed by the C. & E. I. Railroad Company?
A. The C. & E. I. Railway Company.
Q. The C. & E. I. Railway Company?
A. Yes, sir.
Q. What is the full name of that railway company?
A. Chicago & Eastern Illinois Railway Company.
Q. How long have you been in its employ?
A. Eighteen years in Terre Haute.
Q. And your position during that time?
A. General agent of the freight department.
Q. They have a freight office located here in Terre Haute, have they, Mr. Bates?

- A. Yes, sir.
Q. Are you here in answer to a subpoena issued by the National Labor Relations Board?
A. Yes, sir.
Q. I hand you these papers, and ask you if you can identify them?

- (The papers were examined by the witness.)
A. Yes, sir. These are copies of the outbound billing via the Chicago & Eastern Illinois Railway for the period of January 1st to November 30, 1935.
Q. That includes the whole of that period?
36 A. Yes, sir.
Q. They were made under your direct supervision?
A. Yes, sir.
Q. You have not prepared a summary of monthly outbound shipments, have you?
A. No, sir, I have not.

Mr. Smith: I should like to have these introduced as Board's Exhibit.

Trial Examiner Lyons: Show them to counsel.
Mr. Jaburek: Well, I suppose the same thing can be said about this as the other.

Trial Examiner Lyons: Not with such emphasis, however.
Mr. Jaburek: Reduced say about 80 per cent.
Trial Examiner Lyons: They may be introduced and marked Board's Exhibit 9.

(The documents referred to were received in evidence and marked BOARD'S EXHIBIT NO. 9, Witness Bates.)

Q. (By Mr. Smith) I hand you these papers, and ask you to identify them?
A. This is a copy of inbound shipments for the Stamping Company for the same period.

Q. That is January 1 to—

A. January 1 to November 30, 1935.

Q. And that includes all inbound shipments made by the
37 Columbian Enameling and Stamping Company over the
Chicago & Eastern Illinois Railway Company?

A. Yes, sir.

Q. During that period?

A. Yes, sir.

Trial Examiner Lyons: Does counsel offer those?

Mr. Smith: Yes.

Trial Examiner Lyons: Does counsel for the respondent
wish to see them?

Mr. Jaburek: I do not think so. We are assuming they
are correct.

Trial Examiner Lyons: Are they all separate sheets?

Mr. Smith: Yes, all separate sheets.

Q. (By Trial Examiner Lyons) Is there any objection,
Mr. Witness, to having those fastened?

A. No.

Trial Examiner Lyons: They will be admitted as Board's
Exhibits Nos. 10.

(The documents referred to were received in evidence,
and marked BOARD'S EXHIBIT NO. 10, Witness Bates.)

Q. (By Mr. Smith) Do you remember in Exhibit No. 9
how many pages?

A. There is 137 in this.

Q. And the inbound?

A. The inbound is 66.

Q. 66 pages?

38 A. Yes, sir.

Q. All right. Can you tell us from memory how both
the inbound and outbound shipments during the months of
April, May and June and July compared with both inbound
and outbound shipments during January and February?

A. How they compared?

Q. Yes. Were there as many or were there more, or were
there less?

A. There was less during this four months period you
mention.

Q. How much less, approximately?

A. Well, I should say 100 per cent less.

Mr. Smith: All right, I think that is all. You may cross
examine.

Cross-Examination.

Q. (By Mr. Jaburek) Mr. Bates, by that you mean that there were no shipments?

A. That is what I mean.

Q. During those months?

A. During that period.

Q. And of this 137, how many of them represent shipments made within the State of Indiana?

A. I couldn't say.

Q. Of the 66 inbound shipments how many represent shipments to the respondent from within the state of Indiana?

39 A. I don't know.

Mr. Jaburek: That is all.

Trial Examiner Lyons: Before the witness leaves, that of course is something that I would very much like to be informed on.

Does counsel for the Board intend to introduce some summary with respect to the relation of the interstate shipments shown by these exhibits to the intrastate?

Mr. Smith: Not as shown by these exhibits. We expect subsequently to introduced certain evidence bearing on the percentage.

Trial Examiner Lyons: So that it will not be necessary for me to go through every one of these numerous pages to find that out for myself?

Mr. Smith: I think not.

Trial Examiner Lyons: All right.

Now, I suppose there is no question but that both of these railroads that have been represented by the last two witnesses are railroads which are engaged in interstate commerce?

Mr. Jaburek: There is no question on that point.

Trial Examiner Lyons: That may have been brought out, but lest it has not been, we will put it in the record.

Mr. Smith: Yes.

Trial Examiner Lyons: That is all, Mr. Witness.

(Witness excused.)

40 Mr. Smith: Now, the Pennsylvania Railroad.

T. C. BLACK, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

- Q. (By Mr. Smith) State your full name please.
A. T. C. Black.
Q. T. C. Black?
A. Yes, sir.
Q. Where do you live, Mr. Black?
A. 349 Eighteenth, Terre Haute.
Q. You are an employee of the Pennsylvania Railroad?
A. Agent of the Pennsylvania Railroad.
Q. What is that, freight agent?
A. No, agent, I have the passenger department, also.
Q. Passenger and freight?
A. Yes, sir.
Q. How long have you been in that position?
A. About 6 months in Terre Haute.
Q. When did you enter upon your duties here, approximately, Mr. Black?
A. July 15, 1935.
Q. July 15, 1935?
A. Yes, sir.
Q. You are here in answer to a subpoena issued by the National Labor Relations Board?

41 A. Yes, sir.

Q. Have you prepared a summary of incoming and outgoing shipments to and from the Columbian Enameling and Stamping Company for the period January 1 to November 30, as indicated in the subpoena?

A. With the exception of August and September which I was given to understand—

Q. Yes. You have all the period between the 1st of January and the 30th of November with the exception of—

A. August and September.

Q. (Continuing) —August and September?

A. Yes, sir.

Q. This was made under your supervision?

A. Yes, sir.

Mr. Smith: I should like to offer this as an exhibit as summary of inbound shipments of the Columbian Enameling and Stamping Company, and this other also as an exhibit, or summary of the outbound shipments.

(The documents were passed to counsel for Respondent.)

Q. (By Mr. Jaburek) These both include from within the State of Indiana, as well as outside?

A. Every shipment.

Trial Examiner Lyons: If there is no objection, they may be admitted and marked BOARD'S EXHIBITS NOS. 11 and 12 respectively.

42 Mr. Jaburek: The inbound will be No. 11?

Trial Examiner Lyons: The inbound will be No. 11 and the outbound No. 12.

(The documents referred to were received in evidence and marked BOARD'S EXHIBITS NOS. 11 and 12, respectively, Witness Black.)

Trial Examiner Lyons: Are there any further questions, Mr. Smith?

Mr. Smith: Yes, I have further questions.

Trial Examiner Lyons: Very well; proceed.

Q. (By Mr. Smith) From the preparation of those statements can you give an approximate percentage of outbound shipments destined for points outside of the State of Indiana?

A. I cannot give you a very close percentage. I would say there were more interstate shipments.

Q. How about the inbound?

Q. (By Trial Examiner Lyons) More what, please?

A. More interstate.

Q. That is, received from and headed towards states other than Indiana?

A. More outbound outside of the state of Indiana?

Q. (By Mr. Smith) That is only to the outbound?

A. Yes, sir.

Q. The same thing as to inbound shipments,—can you say?

A. That I cannot say; I don't know, I don't recall.

43 Q. All right. Do you recall the number of shipments during the months of April, May, June and July as compared to January and February?

A. I think there were no shipments in May or June that we had a record of.

Mr. Smith: I see. That is all.

Mr. Jaburek: No cross-examination.

Q. (By Trial Examiner Lyons) Mr. Witness, may I ask just one or two questions?

A. Yes, sir.

Q. The Pennsylvania Railroad has trackage in the city of Terre Haute?

A. Yes, sir, they have a freight station at Tenth and Wabash.

Trial Examiner Lyons: And it is admitted, I suppose, that the Pennsylvania Railroad is engaged in interstate commerce?

Mr. Jaburek: In interstate commerce, yes.

Trial Examiner Lyons: That is all.

(Witness excused).

Mr. Smith: The Hancock Trucking Company.

WAYNE ROYSE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

44 Q. (By Mr. Smith) State your full name, please.

A. Wayne Royse.

Q. Where do you live?

A. 2415 Second Avenue.

Q. You are employed by the Hancock Trucking Company?

A. Yes, sir.

Q. What is your position?

A. Agent.

Q. Agent?

A. Yes, sir.

Q. How long have you been in that position?

A. Six months.

Q. You are here in response to a subpoena issued by the National Labor Relations Board?

A. Yes, sir.

Q. Have you prepared a summary of incoming and outgoing shipments made by the Columbian Enameling and Stamping Company?

A. Yes, sir.

Q. Is this your summary here?

A. Yes, sir.

Q. Did you prepare this or was it prepared under your supervision?

A. Under my direct supervision.

Trial Examiner Lyons: Has counsel any difficulty in hearing the questions?

Evidence on Behalf of Petitioners.

45 Mr. Smith: Pardon me, did you hear?

Mr. Jaburek: I heard Mr. Smith, although if he could raise his voice the least bit.

Mr. Smith: All right.

Q. (By Mr. Smith) Now, then, suppose you tell me which is incoming?

A. It is all outbound.

Q. It is all outbound?

A. Yes, sir.

Q. You had no incoming shipments?

A. No incoming shipments.

Q. Between what periods did you have, between what dates?

A. What dates?

Q. Yes.

A. From 1/8/35 to 10/15/35.

Q. Inclusive?

A. Yes, sir.

Q. That is all outbound?

A. That is all outbound.

Mr. Smith: I would like to offer these.

Trial Examiner Lyons: Would counsel like to examine them?

Mr. Smith: Do you wish to examine them?

Trial Examiner Lyons: Does counsel care to examine them?

Mr. Jaburek: Just for a second.

(The documents were passed to counsel for respondent.)

46 Trial Examiner Lyons: They will be received in evidence as BOARD'S EXHIBIT NO. 13.

(The document referred to were received in evidence and marked BOARD'S EXHIBIT NO. 13, Witness Royse.)

Q. (By Mr. Smith) From a preparation of those records, can you tell me approximately the percentage of goods destined for points outside of the state of Indiana?

A. All of it.

Q. All of it?

A. I have no business in the state.

Q. Did you have very few shipments during the months of April, May, June and July?

A. None.

Q. (By Mr. Jaburek) What was your answer?

A. I had none.

Trial Examiner Lyons: To what months was the question addressed?

Mr. Smith: April, May, June and July.

Q. (By Mr. Smith) Your trucking company is engaged in interstate commerce, is it not?

A. Yes, sir.

Mr. Smith: I think that is all.

Cross-Examination.

Q. (By Mr. Jaburek) The company never gave you 47 any business within the state of Indiana at any time, did it?

A. No, sir.

Q. So that all of your work is trucking outside of the state of Indiana?

A. Yes, sir.

Q. And you have no idea as to what proportion of the company's business goes into the state of Indiana, and what proportion goes out of the State of Indiana, have you?

A. I didn't quite get that.

Mr. Jaburek: Will you read the question please.

(The question referred to was read by the reporter as above recorded.)

Trial Examiner Lyons: Before the question is answered, you might indicate what company you refer to, the respondent company or his company?

Mr. Jaburek: The respondent company.

Trial Examiner Lyons: The respondent company, the Columbian Enameling and Stamping Company?

Mr. Jaburek: Yes.

The Witness: No, I would not, could not answer.

Mr. Jaburek: That is all.

Mr. Smith: All right.

Trial Examiner Lyons: All right, Mr. Royse, you are excused.

(Witness excused).

48 Mr. Smith: The Denny Motor Transport Company.

SAMUEL T. CROFTS, JR., called as a witness for the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

- Q. (By Mr. Smith) State your name please.
A. Samuel T. Crofts, Jr.
Q. Where do you live, Mr. Crofts?
A. 323 South 23rd Street, Terre Haute, Indiana.
Q. You are employed by the Denny Motor Transport Company?
A. That is right.
Q. How long have you been so employed?
A. About three years.
Q. What is your position?
A. I am the local manager here from Terre Haute.
Q. And you are here in answer to a subpoena issued by the National Labor Relations Board?
A. I am.
Q. Have you prepared a summary of all incoming and outgoing shipments made to and from the Columbian Enameling and Stamping Company between the months of January 1st, and November 30th?
A. I haven't a summary. I have my records that were in the office. Of course I came down here in May for the company. These records I have here were made prior to my coming to Terre Haute, practically all of them.
49 Q. I see. But they were made under your supervision from the company's books, were they not?
A. Yes, sir.
Q. And they include all incoming and outgoing shipments made over your trucking company?
A. To the best of my knowledge.
Q. Do you have both incoming and outgoing?
A. That is outbound there (indicating).
Mr. Smith: I would like to offer this as BOARD'S EXHIBIT.
Q. (By Mr. Jaburek) Is this the outbound?
A. That is the outbound. Those are my permanent records, and I would like to have them back. Those are not copies, those are originals.
Q. (By Mr. Smith) Those are originals?

A. That is right. I would be glad to furnish you with copies if you care to have them.

Mr. Smith: I think you do not have a great number there. Off the record.

(Discussion off the record.)

Q. (By Mr. Smith) On outbound shipments, just how many shipments do you have destined to points outside the state of Indiana?

A. There is a total from January 1st till the last of March, there was 45 shipments that were received, and there was 50 43 of them that were destined out of the state, was interstate, and 2 intrastate.

Q. I see. And can you tell me what those two intrastate were?

A. Do you mean the point of destination?

Q. Yes, and also what the shipment was.

A. To Fort Wayne, Indiana, in both instances. To the A. H. Perfect Company, Fort Wayne, 101 boxes enamel sheet steel wear.

Q. Do you have another one?

A. To the Still Mandry Goods Company, 108 Columbus Avenue, Fort Wayne, Indiana.

Q. Then as to the inbound shipments, do you have totals made of those?

A. I have 26 starting January 19 up, to and including the 22nd of November.

Q. And of those 26, what number originated in points outside the state of Indiana?

A. Well, I would say possibly 60 per cent of them, just glancing through here. I did not summarize that up before I came over, but looking through here, practically 60 per cent of them are interstate shipments.

Q. You say there are only 26?

A. 26 inbound.

Q. Suppose you count them for me,—

51 A. The number—

Q. (Continuing) —from points outside the state of Indiana?

A. I see. There is 18 of them interstate and the balance are intrastate.

Mr. Smith: All right.

Q. (By Mr. Smith) The Denny Motor Transport Company is engaged in interstate commerce, is it not?

A. Yes, sir.

Mr. Smith: I think that is all.

Trial Examiner Lyons: Are you offering those documents, Mr. Smith?

Mr. Smith: No.

Trial Examiner Lyons: You are substituting this analysis?

Mr. Smith: Those are originals, and he wishes to keep them.

Trial Examiner Lyons: Yes, I understood that, and you are substituting this analysis you obtained from the witness for the documents themselves?

Mr. Smith: Yes.

Trial Examiner Lyons: Does the other side desire to offer those papers or copies of them?

Mr. Jaburek: No.

Trial Examiner Lyons: Then you may be excused.

Mr. Jaburek: The witness has withdrawn both his inbound and outbound?

52 Trial Examiner Lyons: As I understand it, no documents are offered in evidence now.

Mr. Smith: No documents.

Mr. Jaburek: And you are relying on the summary he made here in the testimony?

The Witness: These records are all originals.

Mr. Jaburek: That is all.

Mr. Smith: That is all.

Trial Examiner Lyons: That is all, Mr. Witness.
(Witness excused).

Mr. Smith: The Union Transfer & Storage Company.

H. H. HEDGES, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Smith) Will you state your full name please.

A. H. H. Hedges.

Q. Where do you live, Mr. Hedges?

A. 930 South Fifth Street.

Q. Terre Haute?

A. Terre Haute, yes.

Q. You are employed by the Union Transfer & Storage Company?

A. Yes, sir.

- 53 Q. How long have you been so employed?
A. 30 years.
Q. And your position with that company?
A. Manager.
Q. Manager?
A. Yes, sir.
Q. And you are here in response to a subpoena issued by the National Labor Relations Board?
A. Yes, sir.
Q. Have you prepared a summary of—
A. I haven't prepared a summary. In fact, all I have got here is original bills that we have handled through our place. I haven't got it separated on the in or outbound, anything like that.
Q. You have not separated the inbound and outbound shipments?
A. No. There are very few of them.
Q. Will you just step over and separate them and I will call you back later?
A. Yes.
Mr. Smith: I will want to recall this witness later, Mr. Examiner.
Trial Examiner Lyons: Yes, that is understood.
(Witness temporarily withdrawn.)
Mr. Smith: Now, the Green Line Company.

EDWARD H. SCHULTHEIS, called as a witness for the
National Labor Relations Board, being first duly sworn,
54 testified as follows:

Direct Examination.

- Q. (By Mr. Smith) State your full name.
A. Edward H. Schultheis.
Q. Where do you live?
A. 1801 Poplar Street.
Q. You are employed by the Green Line Company,—is that the correct name?
A. Green Line Motor Express.
Q. The Green Line Motor Express Company?
A. Yes.
Q. What is your position with that company?
A. Owner.

Q. How long have you operated the Green Line Motor Express Company?

A. About 7 years.

Q. And you are here in response to a subpoena issued by the National Labor Relations Board?

A. That is right.

Q. Have you handled both incoming and outgoing shipments made from the Columbian Enameling and Stamping Company?

A. We have had a few.

Q. Have you prepared a summary of those shipments between the 1st of January and the 30th of November?

A. I haven't prepared any. It would be but a very simple matter to arrive at it.

Q. I might ask, have those shipments been limited to any particular period?

A. Well, the request of the subpoena was 1935.

Q. That is right, but have you had shipments all during the period from January 1 to November 30, 1935?

A. Well, there is just five shipments that we have here. Of course the dates are shown and it would be simple to determine the date we handled the shipments.

Q. I see. Your incoming shipments, let me have those first, please.

A. There is one incoming—there is the only incoming we have had.

Q. Did you only have one incoming shipment?

A. We only had one incoming shipment.

Q. Dated September 30, 1935?

A. That is right.

Q. 8 cartons of enamel wear from Minneapolis, Minnesota?

A. That is right.

Mr. Smith: I would like to offer that as an exhibit.

Q. (By Trial Examiner Lyons) Is that an original document?

A. That is a copy.

Trial Examiner Lyons: Unless counsel wants to examine it, it may be admitted as EXHIBIT NO. 14.

56 (The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 14, Witness Schultheis.)

Q. (By Mr. Smith) They are all of the shipments that you have handled for the company?

A. That is all.

Q. Two shipments to Davenport, Iowa, and one shipment to Kentland, Indiana; one to Morocco, Indiana?

A. That is right.

Mr. Smith: I would like to offer these as an exhibit. Do you wish to see them, Mr. Jaburek?

Mr. Jaburek: No. The inbound is Exhibit 14!

Trial Examiner Lyons: Yes, the inbound is Exhibit 14, and the outbound will be received as EXHIBIT 15,—and contains four sheets, Mr. Smith?

Mr. Smith: Four sheets in the outbound, yes.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 15, Witness Schultheis.)

Q. (By Mr. Smith) Your company operates in interstate commerce, does it not?

A. That is right.

Mr. Smith: I think that is all, Mr. Schultheis.

Cross-Examination.

Q. (By Mr. Jaburek) How many shipments did you handle in 1934, inbound?

A. I wouldn't be able to give you that information for 1934.

57 Q. How many did you handle outbound in 1934?

A. I wouldn't be able to state that offhand, either.

Q. Have you any idea as to the volume of business that you did?

A. The only intelligent idea I could give you would be to say it was very little.

Q. And when were these four outbound shipments made?

A. Four outbound? Well, the date is on the—

Q. Well, let us see what the dates are, just specify for the record.

A. One on October 23—but that is intrastate.

Q. I don't care whether interstate or intrastate.

Trial Examiner Lyons: The question refers to all those shipments.

A. The first one October 23, the second is September 26, and we have one on November 4 and one on November 21.

Q. (By Mr. Jaburek) And in other years it would run the same way, about one or two a month?

A. I would say it would, yes.

Mr. Jaburek: That is all.

Trial Examiner Lyons: That is all, Mr. Schultheis.
(Witness excused.)

Mr. Smith: The Glen Pyle Motor Freight Service.

KENNETH BOWLAND, called as a witness for the National Labor Relations Board, being first duly sworn, testified 58 as follows:

Direct Examination.

Q. (By Mr. Smith) State your full name.

A. Kenneth Bowland.

Q. Where do you live, Mr. Bowland?

A. 2123 North 26th Street.

Q. Terre Haute?

A. Terre Haute.

Q. You are employed by the Glen Pyle Motor Freight Service, are you?

A. Yes, sir.

Q. What is your position with that company?

A. Bookkeeper.

Q. How long have you been so employed?

A. About four years.

Q. And you are here in response to a subpoena issued by the National Labor Relations Board?

A. Yes, sir.

Q. Now, have you prepared a summary of incoming and outgoing shipments to and from the Columbian Enameling and Stamping Company between the dates of January 1, and November 30, 1935?

A. Yes, sir.

Q. I notice that your summary gives only the months of January, February and March. Had you no shipments since March 31, 1935?

59 A. No, sir, there were none.

Q. (By Mr. Jaburek) What was that answer?

A. There were none.

Q. (By Mr. Smith) I also notice that all shipments, both incoming and outgoing, are destined to or received from Chicago, Illinois!

A. That is right.

Mr. Smith: I would like to offer this in evidence, Mr. Examiner.

Q. (By Mr. Smith) Your company is engaged in interstate commerce, is it not?

A. Yes, sir.

Trial Examiner Lyons: Is this going in as one exhibit, Mr. Smith?

Mr. Smith: Yes, I think we will put that in as one exhibit, they are all on one page.

Trial Examiner Lyons: This will be received as BOARD'S EXHIBIT NO. 16.

(The document referred to was received in evidence, and was marked BOARD'S EXHIBIT NO. 16, Witness Bowland.)

Mr. Jaborek: No cross examination.

Mr. Smith: That is all, Mr. Bowland.

Trial Examiner Lyons: That is all.

(Witness excused.)

60 Mr. Smith: Now, Mr. Hedges.

Trial Examiner Lyons: If he is not ready, suppose we take a short recess.

(Whereupon a short recess was taken, after which the proceedings were resumed as follows:)

Trial Examiner Lyons: All right, Mr. Smith.

Mr. Smith: Mr. Hedges, will you take the stand.

H. H. HEDGES, was recalled as a witness for the National Labor Relations Board, and having been previously duly sworn, further testified as follows:

Direct Examination (Contd.).

Q. (By Mr. Smith) You have already been sworn?

A. Yes, sir.

Q. You are Mr. H. H. Hedges?

A. Yes, sir.

Q. And you live in Terre Haute?

A. Yes, sir.

Q. And you are employed by the Union Transfer & Storage Company?

A. Yes, sir.

Q. And also the Old Trail Express?

A. Yes, sir.

Q. T. & I. Motor Freight?

A. Yes, sir.

Q. What is the T. & I. Motor Freight?

61 A. Terre Haute and Indianapolis Motor Freight.
Q. And the Terre Haute Union Transfer & Storage
Company?

A. Yes, sir.

Q. You represent those four companies?

A. Yes, sir.

Q. What is your position with those four companies?

A. Manager.

Q. Manager of all four?

A. Yes, sir.

Q. How long have you been so employed, Mr. Hedges?

A. Oh, I have been with the Union Transfer Company for 20 years, and the other companies during the life of their organization, which has been six or eight or ten years, possibly.

Q. And you are here in response to a subpoena issued by the National Labor Relations Board?

A. Yes.

Q. Now, have you prepared a summary of incoming and outgoing freight shipments to and from the Columbian Enameling and Stamping Company by means of those four trucking agencies?

A. Yes.

Q. Do you have that summary with you?

A. Yes, sir.

Q. Are they copies or originals?

A. These are originals taken out of the files.

That is the Union Transfer (indicating).

62 All of this is the Union Transfer, outgoing?

A. Those are inbound.

Q. These are the inbound?

A. Yes, interstate inbound: only five of them.

Q. Do you have any outbound shipments for the Union Transfer Company?

A. No, sir.

Q. All inbound?

A. All inbound.

Mr. Smith: I should like to introduce these as exhibits.

Trial Examiner Lyons: They are copies!

Mr. Jaburek: Is this all one company?

Q. (By Mr. Smith) These are copies or originals, did you say, Mr. Hedges?

A. Originals.

Q. Do you want them returned?

A. Oh, not necessarily.

Mr. Jaburek: I wonder if you could get into the record a summary of the 5 shipments interstate?

Trial Examiner Lyons: The number is so small, perhaps it can be done.

Mr. Smith: Yes.

Q. (By Mr. Smith) You only have 5 shipments—I only see 4 here.

A. That is a copy.

63 Q. Four that the destination is Terre Haute, Indiana, and 1 destination Chicago, Illinois?

A. No, that was Terre Haute. This is a copy made out for one of the drivers.

Q. Oh, I see.

A. It is an interstate shipment from Chicago to Terre Haute anyhow. It should be on this kind of a form, but we use this other form for the driver to bring them in.

Q. They are interstate shipments from Chicago to Terre Haute, Indiana?

A. Yes.

Mr. Jaburek: How many, four or five?

Mr. Smith: Five.

Trial Examiner Lyons: As I understand it now, the 5 are from Chicago to Terre Haute, is that right?

Mr. Smith: Five Chicago to Terre Haute. No outbound shipments.

Q. (By Mr. Smith) Now, do you have the same information as to Old Trail Express?

A. Yes, sir, here is Old Trail Express, 78 outbound shipments.

Q. Any inbound shipments?

A. No inbound shipments. This is all interstate business.

Q. All of the shipments are interstate?

A. Except 1 for South Bend and one for Indianapolis.

The rest of it is interstate. It is connecting line with the

64 Universal Carloading.

Mr. Smith: I should like to offer these.

Trial Examiner Lyons: Before we pass on that, did I understand that the records of the Union Transfer were withdrawn as an exhibit?

Mr. Smith: Yes.

Mr. Jaburek: That is my understanding.

Mr. Smith: We are finished with the Union Transfer.

Trial Examiner Lyons: The Union Transfer is not offered as an exhibit?

Mr. Smith: Yes, it was.

Mr. Jaburek: I thought we verified that by having the summary of five interstate and no outbound.

Trial Examiner Lyons: That is in the record, but if complainant wants to put them in, all right.

Mr. Smith: I also offer it as an exhibit in evidence.

Trial Examiner Lyons: All right, it does not make any difference.

Mr. Jaburek: Not those few, but we have here 78.

Trial Examiner Lyons: We will take that up as a separate matter.

Exhibit 17 is the Union Transfer.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT NO. 17, Witness Hedges.)

65 Mr. Smith: With these 78 I should also like to offer those as an exhibit. All but 2 are in interstate commerce. That is in the Old Trails Express Company.

Do you wish to see these, Mr. Jaburek?

Mr. Jaburek: I do not wish to see them, but I do wish we might do something besides doing a thing like that.

Trial Examiner Lyons: Your objection is solely on the size of the exhibit?

Mr. Jaburek: Our objection is on the size of the exhibit.

Trial Examiner Lyons: I do not mean by asking that question to indicate that that is not a proper position for you to take.

If counsel feels that there is something in there that cannot be introduced in the summary, I cannot keep him from introducing the exhibits.

Mr. Jaburek: Well, there is one thing in that, there is the disclosure of a lot of names here which may be beneficial to our competitors, and we do not think any useful purpose is served in disclosing the names of our customers, which can be made useful by our competitors.

Trial Examiner Lyons: In any report that I might make the names of those customers would not appear. I would not consider them important.

The cities or states in which located would be the only thing of interest to me.

66 Mr. Smith: Since we do not have a summary of the amount of tonnage, destination or any other information concerning the shipments, it seems to me to be the only logical course to pursue to introduce these in evidence as exhibits.

Mr. Jaburek: With all of these names going into the record.

Trial Examiner Lyons: Well, they do not go in, they are not copied in, except the exhibit may be made part of the record at some time, and presumably somebody could read that record at some future date.

Mr. Jaburek: The exhibit will be made a part of the record and that name will appear in the record, and no useful purpose is served, and a great deal of harm is done.

Trial Examiner Lyons: Of course, all of that could be saved if counsel could, before the end of the hearing, arrive at some stipulation as to how this could go in. If you get together and draw up between yourselves a stipulation. I would be glad to surrender part of the hearing hours if counsel did not feel inclined to do it after the hearing hours.

Mr. Smith: Well, pending that possible stipulation, will you admit these as Exhibits of the Board?

Trial Examiner Lyons: Well, suppose we mark them for identification?

Mr. Smith: All right.

Trial Examiner Lyons: To be offered later.

67 Mr. Jaburek: Well, of course that applies to everything that has already transpired. A lot of these have already contained names.

Mr. Smith: I do not see any particular objection to introducing that into the record.

Trial Examiner Lyons: Well, suppose we mark that for identification at the present time. Then if counsel can get together, it won't be introduced as an exhibit. If they cannot, then I suppose they will have to go in, because they are material.

Mr. Jaburek: I think in the interest of saving expense to both the union and everybody else, a stipulation to that effect should be made, and I am sure we will not put a stone in the way.

Trial Examiner Lyons: Well, that is up to you gentlemen. I cannot make the stipulation for you. When you get your stipulation and present it to me and say you both agree on it, I will accept it.

We will mark this Board's Exhibit No. 18 for identification.

(The document referred to was marked "Board's Exhibit 18" for identification.)

Q. (By Mr. Smith) Now, on the T. & L. Motor Freight, you have both incoming and outgoing shipments?

MICROCARD

TRADE MARK 

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- A. Yes, sir.
68 Q. Let me have your incoming; you have 16?
A. 16.
Q. 16 incoming shipments?
A. Yes, sir.
Q. Are they all from points outside the state of Indiana?
A. All interstate, yes.
Q. And your—
A. Outbound.
Q. (Continuing)—outbound, you have 2, both destined for points outside the state of Indiana?
A. Interstate, yes.

Mr. Smith: Well, I would suggest that these also be marked for identification.

Trial Examiner Lyons: Yes, the successive number. (The document referred to was marked "Board's Exhibit No. 19," for identification.)

Q. (By Mr. Smith) Now, as to the Terre Haute Union Transfer & Storage.

- A. They have had no transactions.
Q. Now, all four of these trucking companies are engaged in interstate commerce, are they not?
A. Three of them are.
Q. Which one is not?
A. The Terre Haute Union Transfer, which you have no transactions with.

69 Q. Which has no transactions with the Columbian Enameling and Stamping Company?

A. No.

Mr. Smith: I think that is all, Mr. Hedges.

Trial Examiner Lyons: Just a minute. Are there any questions, Mr. Jaburek?

Mr. Jaburek: No cross examination.

Trial Examiner Lyons: That is all.

(Witness excused.)

Mr. Smith: Mr. Trial Examiner, that completes all of the examination of the trucking companies.

Might I suggest that we adjourn for lunch at this time?

Trial Examiner Lyons: Well, if there is no objection. We have come to the stage in the case now where the testimony is to be of a different character, and instead of running a half hour or something like that, perhaps we can adjourn now and resume at 1:15.

Mr. Jaburek: And suppose we discuss for a few minutes this stipulation?

Trial Examiner Lyons: Yes.

We will adjourn until 1:15.

(Whereupon, at 12 o'clock noon, a recess was taken until 1:15 o'clock p. m.)

70 After Recess.

The hearing was resumed at 1:15 o'clock p. m. pursuant to the taking of recess.

Trial Examiner Lyons: Proceed, gentlemen.

Mr. Smith: I have one other witness I would like to put on to testify concerning trucking shipments.

Trial Examiner Lyons: All right.

Mr. Smith: The Hayes Trucking Company.

L. H. DOTY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Smith:) State your full name.

A. L. H. Doty.

Q. Where do you live, Mr. Doty?

A. 730 South Fourth Street.

Q. Terre Haute?

A. Yes, sir.

Q. Are you employed by the Hayes Trucking Company?

A. I am.

Q. The Hayes Trucking is engaged in interstate commerce?

A. Yes, sir.

Q. What is your position with the Hayes Trucking Company?

A. Terminal manager.

Q. How long have you held that position?

A. About two and a half years.

71 Q. You are here in response to a subpoena issued by the National Labor Relations Board?

A. Yes, sir.

Q. Have you prepared a summary of shipments incoming and outgoing from and to the Columbian Enameling and Stamping Company?

A. I haven't a complete summary; I have record, though.

Q. May I see them please?

A. Yes, sir.

(The records in question were passed to Mr. Smith.)

Q. (By Mr. Smith) Are they copies, Mr. Doty, or originals?

A. These bills are originals for the last two months.

Q. These are inbound shipments?

A. Yes, sir.

Q. And this constitutes all of the outbound shipments between what months?

A. Between January 1st 1935 and November, including November, 1935.

Q. And November 30th, 1935?

A. Yes, with those two sets.

Mr. Smith: I should not like to have these introduced as exhibits, but to be classified in accordance with a stipulation that we will take up after this witness has testified.

Do you wish to see them, Mr. Jaburek?

Mr. Jaburek: Just for a minute.

72 Trial Examiner Lyons: It might be well to have them marked for identification.

Mr. Jaburek: The outbound is there also?

Mr. Smith: This is inbound and outbound.

Mr. Jaburek: Yes, the same period on both inbound and outbound!

The Witness: Yes, sir.

(The documents referred to were marked "Board's Exhibits Nos. 20 and 21, respectively, for identification.")

Mr. Smith: That is all.

Mr. Jaburek: No cross examination.

Trial Examiner Lyons: That is all, Mr. Witness.

(Witness excused.)

Mr. Smith: Do you wish to proceed?

Mr. Jaburek: As to the stipulation?

Mr. Smith: Yes.

Mr. Jaburek: I think the reporter might read the stipulation, if the Examiner please, that we have dictated.

(The stipulation referred to was read by the Reporter as follows:)

"It is hereby stipulated by and between the parties to this cause and their respective counsel, that as to outbound shipments made by Respondent of its manufactured product,
73 from 80 to 85 per cent is transported to points outside of the state of Indiana.

"That as to inbound shipments to respondent's plant at Terre Haute, Indiana, exclusive of coal used in the manufacture of its product, and cartons used in shipping the same, a majority of its raw materials are shipped from points without the State of Indiana.

"That, taking shipments of coal and cartons also into consideration, a majority of respondent's inbound shipments are transported from within the State of Indiana.

"That during the years 1933 and 1934 the number of inbound shipments in each year approximated 500 carloads.

"That during the first 11 months of 1935, such inbound shipments approximated 286 carloads;

"That during the year 1933 the number of carloads of finished products transported by company was approximately 302; during the year 1934, 385, and in the first 11 months of 1935, 215 cars.

"That approximately 80 per cent of the inbound shipments made to respondent are made f.o.b. Terre Haute, Indiana.

"That approximately 95 per cent of its outbound shipments are made f.o.b. Terre Haute, Indiana.

"It is further stipulated that Exhibit from No. 7 to No. 74 16 both inclusive, heretofore offered and received in evidence; and exhibits Nos. 17 to 23, both inclusive, marked for identification only, be withdrawn as exhibits in this cause, and that same accompany the record to Washington for the confidential use of the National Labor Relations Board, and that the Columbian Enameling and Stamping Company will not be examined concerning persons or companies to which finished products are shipped, or from which raw materials are received."

Trial Examiner Lyons: As I understand that is not formally entered into but just tentatively?

Mr. Smith: No, I prefer it be read into the record now.

Mr. Jaburek: Read into the record now.

Trial Examiner Lyons: All right, that may be incorporated into the record, and the exhibits which are therein stated to be withdrawn, are withdrawn as exhibits, subject to be sent along with the record.

Mr. Smith: And accompany the record to Washington.

Trial Examiner Lyons: Yes.

Is it the purpose to introduce anything further in regard to the subject of the stipulation?

Mr. Jaburek: I think that later on I will introduce a summary of carloadings, revenue carloadings.

Trial Examiner Lyons: Will they indicate the points
75 to which shipped and points from which received?

Mr. Jaburek: No, they will not.

Trial Examiner Lyons: Would it be possible for that to be prepared without too great burden? Name the cities and states to a certain extent?

You have said in your stipulation they go out of the state and others come from within the state. I would be interested to know how extensively, whether it simply goes over the border into one state or is spread into different parts of the country.

Mr. Jaburek: This summary was taken from The Traffic World which publishes a weekly revenue carloading without reference to points of origin and points of shipment. And that is as far as we have been able to get that information.

Mr. Nicoson: Is that confined to the operations of the Stamping Company, or is that general?

Mr. Jaburek: General throughout the country.

Mr. Nicoson: As I understand the Trial Examiner, he would like to have—

Trial Examiner Lyons: I thought this whole thing referred to the operations of this company?

Mr. Jaburek: All this does refer.

Trial Examiner Lyons: I see.

You mean this report to which you refer is not limited to these extracts made up for special reference to the business of the respondent in this case?

Mr. Jaburek: Well, this stipulation contains that information.

Trial Examiner Lyons: Yes.

Mr. Jaburek: As to which is interstate and which is intra-state.

Trial Examiner Lyons: Now, could you from your own records supply me with information as to the states to which you ship your finished products, and the states from which you require these raw materials?

Mr. Jaburek: I think that can be done fairly readily. Do you mean as to volume from each state?

Trial Examiner Lyons: Well, if that is possible. If that was not conveniently possible, if you could say from the states A, B, C and D and to the states A, B, C and D, so I could get a clearer picture of how extensive your interstate business is.

Mr. Jaburek: I think we will be able to have that prepared for tomorrow.

Well, possibly by Wednesday we can have something on the point.

Trial Examiner Lyons: Well, do what you can. Have it here before we are through, because my mind is not quite satisfied with the information. The evidence in the stipulation is very good as far as it goes, but I would like to have it 77 a little more in detail.

Mr. Jaburek: I think we will be able to furnish it.

Trial Examiner Lyons: Was your stipulation intended to mean that these documents introduced as Exhibits and then withdrawn, may be referred to by me in preparing my report?

Mr. Jaburek: Yes, used by you in preparing your report, but without the names—

Trial Examiner Lyons: Yes, exactly, I understand that.

Mr. Jaburek: (Continuing)—being used.

Trial Examiner Lyons: And I think it was said that they were to be sent to Washington for the use of the National Labor Relations Board.

That would extend to us in preparing this intermediate report?

Mr. Smith: Yes.

Mr. Jaburek: That is our understanding of it.

Trial Examiner Lyons: Yes. I just wanted to make sure. You may proceed, gentlemen.

Mr. Nicoson: I will call Mr. Cox.

OTIS COX, called as a witness for the Petitioner, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Nicoson) You may state your full name.

A. Otis Cox.

Q. Where do you live, Mr. Cox?

78 A. 415 North 14th Street, in the city.

Q. The city of Terre Haute, Indiana?

A. Yes, sir.

Q. And are you a member of the Federal Labor Union No. 19694?

A. Yes, sir.

Q. Do you hold any executive position in that organization, Mr. Cox?

A. I am secretary.

Q. When was that organization first formed?

A. In June 1934.

Q. What was the purpose of that organization?

A. It was organized for the purpose of creating an agency for collective bargaining.

Q. Did that organization have a membership?

A. Yes, sir.

Q. Was that membership drawn from any specific plant or industry?

A. Yes, sir.

Q. From what plant or industry was it drawn?

A. From the Columbian Enameling and Stamping Company.

Q. After the organization of this—strike that out.

This organization of which you speak, was that affiliated with the American Federation of Labor?

A. Yes, sir.

79 Q. And is it what is known as a bona fide labor organization?

A. Yes, sir.

Mr. Jaburek: Objected to as calling for a conclusion of the witness.

Trial Examiner Lyons: The objection is sustained. That is as to the last question only.

Q. (By Mr. Nicoson) Is it a labor organization?

A. Yes, sir.

Q. Did this labor organization have any dealings with the management of the Columbian Enameling and Stamping Company?

A. Yes, sir.

Q. You may recite what they were?

A. We entered into an agreement with the company on July 14, 1934.

Q. And prior to the entering into the agreement did you have any difficulties in arriving at that agreement?

A. Yes, sir.

Q. State what was necessary, what steps were taken to bring about that agreement?

A. After the company's refusal to negotiate with the newly organized organization, the membership voted a strike.

Mr. Jaburek: Just a moment now. If there was a vote to

strike, the best evidence of that would be the minutes of the meeting of the union.

80 Trial Examiner Lyons: That is so, Mr. Nicoson. If they can be procured and you insist on it, Mr. Jaburek, I suggest it be produced.

Mr. Nicoson: That is not material.

Q. (By Mr. Nicoson) It was necessary, was it not, for you to appeal to the National Labor Relations Board under the National Industry Recovery Act?

Mr. Jaburek: Just a moment. Just a moment. I object to that as calling for a conclusion of the witness, "It was necessary."

Mr. Nicoson: You are right.

Trial Examiner Lyons: If that question is withdrawn, I will not need to rule on the objection.

Mr. Nicoson: I will withdraw it.

Trial Examiner Lyons: Very well.

Q. (By Mr. Nicoson) Did you submit your controversy to the Labor Board under the National Industrial Recovery Act?

A. We did.

Q. What happened as a result of that reference?

A. An agreement was signed between the company and the organization.

Q. I hand you Board's Exhibit No. 1 which has been admitted in evidence, and direct your attention to Exhibit A, filed in the answer by the Columbian Enameling and Stamping Company, and ask you if this is the agreement entered 81 into at that time?

(The document in question was passed to the witness.)

A. That is it.

Q. Now, under that agreement, did you have any dealings with the management of the Columbian Enameling and Stamping Company, Mr. Cox?

A. Yes, sir.

Q. State the nature—

Trial Examiner Lyons: When you say "You," Mr. Nicoson, do you mean this witness or the organization he represents?

Mr. Nicoson: This witness in his official capacity I should say.

Trial Examiner Lyons: Yes.

Q. (By Mr. Nicoson) In your dealings with the management, your represented the organization, is that true?

A. Yes, sir.

Q. I believe you did say you had—or did you answer that former question?

Trial Examiner Lyons: Will you read that question, please?

(The question referred to was read by the reporter as above recorded.)

Q. (By Mr. Nicoson) You may state if you, representing your organization, had presented any grievances to the management after the signing of this agreement?

82 A. Yes, sir.

Q. Would you state when those presentations were made?

A. At various times there were some.

Q. Were they frequent or infrequent?

Mr. Jaburek: That is objected to, let us have the dates; that calls for a conclusion of the witness.

Trial Examiner: That is desirable, if possible.

Q. (By Mr. Nicoson) Well, do you know the exact dates, Mr. Cox?

A. Not of all of them, no.

Q. Do you know the dates of any of them?

A. I know the approximate dates.

Q. (By Trial Examiner Lyons) Well, let us have those.

A. Early in November.

Q. Of what year?

A. 1934.

Q. 1934?

A. Yes, sir.

Trial Examiner Lyons: All right.

Q. (By Mr. Nicoson) What was the nature of that meeting?

A. The committee representing the organization asked for arbitration on a modification of the standing contract.

Q. Was that after a grievance had been presented to the company?

A. Yes, sir.

83 Q. Did the company discuss that grievance?

A. Yes, sir.

Mr. Jaburek: Now, just a moment. I think, Mr. Examiner, we should know what this grievance was and when it was presented.

Mr. Nicoson: You will.

Mr. Jaburek: Nothing was said to us about it.

Q. (By Mr. Nicoson) What was the substance of that grievance presented at that time?

A. More wages.

Q. Was that the only matter that was discussed?

A. That was the main object. There were other accompanying grievances and conditions that would bring about ability for the company to pay more wages.

Q. What was the result of that discussion?

Mr. Jaburek: That is objected to as calling again for the conclusion of the witness.

Trial Examiner Lyons: That objection is sustained. And incidentally, may it appear that these things were discussed? As it stands now, it is yet to appear that all of those things were discussed with the company.

Perhaps that can be done by one question.

Mr. Nicoson: I believe I asked, Mr. Examiner, in the first question, if they had discussed those grievances.

Trial Examiner Lyons: Perhaps you did, but it will 84 do no harm to ask it again.

Mr. Nicoson: No.

Q. (By Mr. Nicoson) Those various points presented by you for your committee, were they discussed with the management, Mr. Cox?

A. Yes, sir.

Q. Who was present representing the management?

A. Mr. Grabbe.

Q. Anyone else?

A. Mr. Kelsy and Mr. Gorby, Sr., and Mr. Gorby, Jr.

Q. You say that was in November?

A. I am pretty sure it was.

Q. Were any of those grievances allowed?

A. None.

Q. What was done after those grievances were refused?

A. The organization asked that they be submitted to arbitration.

Q. Was that request allowed or not?

A. It was not.

Q. What was then done, if anything?

A. We called a special meeting.

Q. Special meeting of what?

A. Of the organization, and took a strike vote.

Mr. Jaburek: The same objection, if the Examiner please.

85 The records of the union are the best evidence of what happened at the union meeting.

Trial Examiner Lyons: If that objection is made, it will be sustained.

I suppose those things will be forthcoming.

Q. (By Mr. Nicoson) After these refusals of these presentations in the November meeting, did you ask the management to modify your agreement?

A. Will you ask that question again please?

Mr. Nicoson: Read the question please.

(The question referred to was read by the reporter as above recorded.)

The Witness: I suppose you mean after we asked that these grievances be submitted to arbitration?

Q. (By Mr. Nicoson) That is right.

A. Yes, sir.

Q. Was that agreement modified?

A. No, sir.

Mr. Nicoson: Will you please mark this for identification as Petitioner's Exhibit 1?

(The document referred to was marked "Petitioner's Exhibit No. 1" for identification.)

Q. (By Mr. Nicoson) I will hand you this document, marked Petitioner's Exhibit No. 1, and ask you if you know what it is!

A. Yes, sir.

Q. What is it?

86 A. It is an answer in circular form mailed by the management to all employees stating their attitude on the grievances that we presented.

Q. Was that posted at the plant?

A. I don't remember whether it was posted at the plant or not.

Q. Did you receive a copy of it?

A. Yes, sir.

Mr. Nicoson: Petitioner now offers in evidence PETITIONER'S EXHIBIT 1.

Trial Examiner Lyons: It will be received.

(The document referred to previously marked PETITIONER'S EXHIBIT NO. 1 for identification, was received in evidence, Witness Cox.)

Q. (By Mr. Nicoson) Directing your attention again to Petitioner's Exhibit 1, I will ask you to observe the notations on this proposal.

(The document in question was passed to the witness.)

Q. Were any of those statements captioned "Proposal", any of the questions you presented in this meeting which you testified took place in November?

A. Yes, sir.

Q. How many of them were presented at the November meeting?

A. All of them.

Q. Did the company ever write to you directly as to 87 their answer on these proposals?

Mr. Jaburek: Just a moment. The use of that word "You" I am afraid is a little bit misleading.

Mr. Nicoson: All right, I will make it to the organization then, if he knows.

The Witness: I will have to have that question again, please.

(The question referred to was read by the reporter as above recorded.)

Q. (By Trial Examiner Lyons) By "you" the question means the organization which you represent.

A. No.

Q. (By Mr. Nicoson) This is the only answer received as to your proposal?

A. That is all.

Q. Did you have any further conferences after the November meeting?

A. Yes, sir.

Q. State what they were please.

A. It was in reference to that same proposal, that paper marked Proposal and Answer.

Mr. Jaburek: Mr. Examiner, may we have the time fixed, the place fixed, and the parties present?

Trial Examiner Lyons: I think counsel will do that for you.

88 Q. (By Mr. Nicoson) You may state what time this next conference occurred?

A. Well, I can't exactly.

Q. Do you know approximately?

A. It was the first of the year, towards the first of 1935, at the office of Mr. Gorby.

Q. Who was present at that meeting?

A. The organization committee, Mr. Grabbe, Mr. William Gorby, and Mr. Kelsey.

Q. And what was discussed at that meeting, if anything?

A. Those same grievances and proposals.

Q. And were those grievances allowed?

A. No, sir.

Q. What was next done by your organization?

Mr. Jaburek: I object to the form of the question, if the Examiner please.

Trial Examiner Lyons: What is the objection?

Mr. Jaburek: The question is too general as to what was next done by his organization. I think it should be limited in some manner to something that has something to do with this case.

Trial Examiner Lyons: I think that is so, but I think the witness would understand that is all that was wanted, but if counsel can reframe that question in some more satisfactory way, I have no objection.

89 Q. (By Mr. Nicoson) When was the next date you had a meeting with the management, if you had one?

A. Some time during the past summer, June 11 I believe.

Q. You had no meetings with the management between the first of the year and June?

A. The first of the year, that may be towards the latter part of February or the first part of March, between then and June 11th, no.

Trial Examiner Lyons: May I ask a question here?

Mr. Nicoson: Certainly.

Q. (By Trial Examiner Lyons) At this meeting which you have termed as having taken place the first of the year, which now appears to have been either February or March, was this document, Petitioner's Exhibit No. 1 presented or used or talked about?

A. That was the subject of the meeting.

Q. And there was a copy of it there?

A. Yes, sir.

Trial Examiner Lyons: That is all.

Mr. Nicoson: Will you mark that Petitioner's Exhibit 2, for identification?

(The document referred to was marked Petitioner's Exhibit No. 2, for identification.)

Q. (By Mr. Nicoson) I will hand you a paper marked Petitioner's Exhibit No. 2, and ask you to examine it.

90 (The paper in question was passed to the witness.)

Q. You may state if you know what that is.

A. I do.

Q. What is it?

A. It is a copy—

Mr. Jaburek: That is objected to, that speaks for itself, what it is.

Mr. Nicoson: He can tell what it is if he knows.

Trial Examiner Lyons: It does not speak for itself to me until it is introduced in evidence.

Mr. Nicoson: It is not in evidence yet, it will speak for itself when it gets in.

Mr. Jaburek: Let us introduce it in evidence and put it before the Examiner.

Mr. Nicoson: We will introduce it when we get around to it.

Mr. Jaburek: I object to the witness telling what the document is when the document is in court or at this hearing and speaks for itself.

Trial Examiner Lyons: Well, it might help to give the general title. I would not want legal conclusions.

Mr. Nicoson: I did not intend that to be the answer.

Trial Examiner Lyons: Nothing he would say in answer to that would affect my judgment. Just identify the document. If it is limited to that, I will admit it.

91 Mr. Nicoson: That is all I intend to do at this time.

The Witness: It is a copy of a resolution adopted by the Union and sent to the management on March 17.

Q. (By Mr. Nicoson) Were you present when this was mailed to the management?

A. Yes.

Q. And was it placed in an envelope and sufficient postage placed upon it?

A. Yes, sir.

Trial Examiner Lyons: Perhaps counsel will admit that it was received.

Mr. Jaburek: It was received, if it is the same that I have in mind.

(The document in question was passed to Mr. Jaburek.)

Mr. Jaburek: Yes, a copy of this was received by the company.

Mr. Nicoson: We now offer PETITIONER'S EXHIBIT NO. 2 in evidence.

Trial Examiner Lyons: I take it that is not objected to?

Mr. Jaburek: No objection.

Trial Examiner Lyons: All right, it may be received in evidence.

(The document previously marked PETITIONER'S EXHIBIT NO. 2 for identification, was received in evidence, Witness Cox.)

92 Mr. Nicoson: Will you mark this Petitioner's Exhibit No. 3 for identification?

(The document referred to was marked Petitioner's Exhibit No. 3 for identification.)

Q. (By Mr. Nicoson) I hand you a paper marked Petitioner's Exhibit No. 3 for identification, and ask you to examine it please.

(The document referred to was passed to the witness.)

Q. Will you state in a general way, if you can, what that paper is?

A. It is the company's answer to our request for arbitration of the grievances presented.

Q. Was that paper sent direct to the organization?

A. A copy was.

Q. Was this paper, as far as you know, sent to other employees in the factory?

A. Every employee received one.

Mr. Nicoson: I now offer in evidence, if the Examiner please, PETITIONER'S EXHIBIT No. 3.

Trial Examiner Lyons: It may be marked.

Mr. Nicoson: It is marked for identification.

(The document previously marked PETITIONER'S EXHIBIT NO. 3 for identification, was received in evidence, Witness Cox.)

Trial Examiner Lyons: I am not reading the documents extensively as they come in, unless you gentlemen ask me to. Any time you want me to read one as we go along, I will read it.

93 Mr. Jaburek: Except, if the Examiner please, there will be quite a number of exhibits, and I am afraid you will not be able to grasp all of this testimony unless you do read those exhibits at this time.

Trial Examiner Lyons: Well, if that is the case, I will.

Mr. Nicoson: I have no objection. I would suggest, if the Examiner please, if we are going to put that duty upon you, that all of Petitioner's Exhibits that have been introduced heretofore be read into the record, or you can read them to yourself, just as the case may be.

Trial Examiner Lyons: Proceed, Mr. Nicoson, I do not think we will read them into the record. If they are going in as exhibits, there will be no particular advantage in that.

Mr. Nicoson: Mark this Petitioner's Exhibit No. 4 for identification, please.

(The document referred to was marked Petitioner's Exhibit No. 4 for identification.)

Q. (By Mr. Nicoson) I hand you paper marked Petitioner's Exhibit No. 4 for identification, and ask that you examine it please.

(The document in question was passed to the witness.)

94 **Q.** (By Mr. Nicoson) Will you state if you know what that is, Mr. Cox?

A. That is a request to the management for a meeting with the committee representing the organization.

Q. (By Trial Examiner Lyons) What is the date of it?

A. June 7.

Mr. Jaburek: We will object to that last clause, if the Examiner please, because it states the conclusion of the witness; "with the committee representing the organization."

Trial Examiner Lyons: You mean that is part of the answer that has just been given?

Mr. Jaburek: Yes, I think that part of the answer should be stricken as being a conclusion, Mr. Examiner.

Mr. Nicoson: You mean the answer he give to the Examiner?

Mr. Jaburek; That he said right now that this letter is a request for a meeting with a committee representing the organization.

That letter does not so state, and it is his conclusion that it was a committee representing the organization, and I think that that last clause in his answer should be stricken as being his conclusion.

Trial Examiner Lyons: Well, suppose that the answer be stricken out and the paper itself be read into the record.

95 **Mr. Jaburek:** No, let it go to the record. We received this letter, we are not disputing the receipt of the letter.

Mr. Nicoson: Petitioner now offers in evidence PETITIONER'S EXHIBIT NO. 4.

Trial Examiner Lyons: It is admitted, and may be marked Petitioner's Exhibit No. 4.

(The document previously marked PETITIONER'S EXHIBIT NO. 4 for identification, was received in evidence, Witness Cox.)

Q. (By Mr. Nicoson) I again hand you Petitioner's Exhibit No. 3, Mr. Cox, and ask if your organization ever got an answer to that?

A. No, sir.

Q. Now, was there anything that happened at the plant of the Columbian Enameling and Stamping Company on the 23rd of March, 1935?

A. Yes, sir.

Q. What happened?

A. Operations ceased.

Q. What do you mean by "operations ceased"?

A. The employees quit work, struck.

Q. After this strike, was there any effort on the part of either the organization or the management to meet with one another to attempt to discuss the cause and effect of the strike, or any other reason?

Mr. Jaburek: Now just a moment please, may I have 96 that question read?

(The question referred to was read by the reporter as above recorded.)

Mr. Jaburek: Well, the "any other reason" has nothing to do with this case, to discuss the strike.

Trial Examiner Lyons: Well, the question is whether there was a meeting requested by the organization represented by this witness and the respondent.

Mr. Jaburek: With reference to the strike.

Trial Examiner Lyons: Well, suppose we do strike out that last part "or for any other reason."

Mr. Nicoson: All right.

Trial Examiner Lyons: If counsel wants to put another question involving something else, we will pass on that when it comes up, but the question is admissible so far. I suppose you meant after the strike commenced?

Mr. Nicoson: That is right.

Trial Examiner Lyons: Yes.

The Witness: Yes, sir.

Q. (By Mr. Nicoson) When was that meeting held?

A. On June 11th.

Q. Who was present at that meeting?

A. Mr. C. B. Gorby, Mr. Grabbe, Mr. William Gorby, and three representing the union.

Q. Who were the three?

97 A. Gordon Brown, Morris Heuer and myself.

Q. Where was this meeting held?

A. In the Deming Hotel.

Q. And what was discussed at that meeting?

A. Practically nothing.

Q. Wasn't there anything said at all?

A. Yes sir.

Q. What was said, if you remember?

A. We were told that we could all go back to work, as individuals, but there would be no agreement between the organization and the company in regard to working conditions, hours and wages.

Q. Who made that statement?

A. Mr. Gorby.

Q. What else was said?

Trial Examiner Lyons: May it appear now who Mr. Gorby is?

Mr. Nicoson: Sir?

Trial Examiner Lyons: May it appear at this time who Mr. Gorby is, just what office he holds with the respondent.

Mr. Jaburek: The president of the respondent.

Q. (By Mr. Nicoson) And who is Mr. Grabbe?

A. I believe he is vice president and general manager.

Q. Of what?

A. Of the Columbian Enameling and Stamping Company.

98 Q. He was present at that meeting?

A. Yes, sir.

Q. What else was said?

A. Well, we went there for the purpose of trying to reach some kind of an agreement between the organization representing the employees and the company, but we were met with a flat refusal on the part of the company representatives to sign any sort of an agreement.

Mr. Jaburek: I object to that answer and move that it be stricken as not responsive.

Trial Examiner Lyons: I think it is not responsive and it may be stricken.

Will you reframe your question?

Mr. Nicoson: That is right, it is not responsive.

Trial Examiner Lyons: Read the question please.

(The question referred to was read by the reporter as above recorded.)

The Witness: There was some talk about burning the plant down.

Q. (By Trial Examiner Lyons) Well, try to tell us who said these things, naming the man if you can and repeating the conversation as nearly as you can. We know you cannot remember every word of it.

A. Mr. Grabbe asked us what would be the chance of having us burn his property down for him up there.

99 Q. (By Mr. Nicoson) Did he say what the reason was that he wanted the property burned down?

Mr. Jaburek: I object to that question, what he wanted it burned down for.

Trial Examiner Lyons: I think the question had better be withdrawn. You may ask him what Mr. Grabbe said and then we can determine whether your interpretation is correct or not.

Q. (By Mr. Nicoson) What further did Mr. Grabbe say, if anything?

A. Well, he said the way the plant was it wasn't making any money, if it was burned down he could get his insurance, words to that effect. That wasn't a quotation, that is what he said in substance.

Q. Was that all that transpired at that meeting?

A. No, sir.

Q. What else transpired?

A. Mr. Grabbe intimated—

Q. Just tell what he said.

Q. (By Trial Examiner Lyons) Not what he intimated, what he said, I will determine what the intimation was.

A. Well, I can't quote him further, so I won't try it.

Q. Well, if you cannot remember the conversation but can remember the substance of the statement, you may state that without using such words as "Intimation", or "suggestion", or words of that character.

100 A. We gathered that they intended to put in some armed guards and start operations.

Mr. Jaburek: I object to that.

Trial Examiner Lyons: That is objected to?

Mr. Jaburek: Yes.

Q. (By Trial Examiner Lyons) Not what you gathered, but as nearly as possible what he said. This has to go down on a written record, you know, and we want to know as nearly as we can what the man said rather than what you thought.

A. He said the plant was going to operate without a union.

Q. (By Mr. Nicoson) Did he say when he was going to begin operations?

A. No, sir.

Q. Did he say in what manner he would begin operations?

A. No, sir.

Q. Did he say anything about where he was going to get his force to operate?

A. Yes, sir.

Q. What did he say about that?

A. He said that any of his—any of the striking employees could have their jobs back as individuals. No one would be discriminated against, but he was going to put enough men in there to run the plant. That if they didn't want their jobs back, he would get somebody else.

Q. When was the next meeting that you had with the management of the Columbian Enameling and Stamping Company?

A. That was the last we had.

Q. Did anything happen in the city of Terre Haute on the 22nd day of July 1935 that you know of?

A. Yes, sir.

Q. As regards to the Columbian Enameling and Stamping Company?

A. Yes, sir.

Q. What happened?

A. A general labor holiday was declared.

Q. What do you mean by general labor holiday?

Mr. Jaburek: Now just a minute. I object to that question because it has nothing to do with this case and is simply an attempt to interject something into it that has no bearing upon it.

Mr. Nicoson: Well, if the Examiner please, after this has gotten itself all together, it will have considerable to do with it. Possibly this witness is not competent to testify as to the history as it chronologically unfolds itself, but there are other witnesses who will appear later and fill up the cracks.

Trial Examiner Lyons: Well, just at present we are confined to the objection to the specific question and I would like to have the last question read.

(The question referred to was read by the reporter as 102 above recorded.)

Trial Examiner Lyons: Well, that question of course is general, too general to be admitted here.

Mr. Nicolson: Well, the question before, he answered that, there was a general holiday declared. I am asking him to explain what he means by a general holiday.

Trial Examiner Lyons: Well, of course a general labor holiday might mean a great many things. What you really want to find out is what happened on this day which he has characterized as a general labor holiday.

Mr. Nicoson: If the Examiner will take judicial notice of general labor holiday, that satisfies me.

Trial Examiner Lyons: No, I cannot do that, but this witness' conception what a general labor holiday is will not be helpful to me, but I perhaps will be interested to know what happened if it turns out later it has some bearing on this question.

Just keep it within bounds. He might in answering that question give a lot of things which would not be of any importance to me in this issue.

You may ask him what took place, and upon your assurance that you will connect it up, I will allow you to ask him what took place in Terre Haute on that day.

Mr. Jaburek: I did ask him that and he said there was a general holiday. Now, I want him to explain specifically 103 as to what constituted the general holiday.

Trial Examiner Lyons: In Terre Haute?

Mr. Nicoson: In Terre Haute.

Trial Examiner Lyons: On that day?

Mr. Nicoson: On that day.

Trial Examiner Lyons: All right, you may ask him that, but you said, "What do you mean by a general labor holiday?" That might be a general labor holiday in any part of the world under any circumstances, and I would not be interested in that.

Q. (By Mr. Nicoson) What constituted the—strike that out.

What followed the declaration of a labor holiday in the city of Terre Haute on the 22nd day of July 1935?

A. Business and industrial activities ceased.

Mr. Jaburek: Now, if the Examiner please, I do not want to clutter the record with a lot of useless objections, but here is a question asking for a conclusion of the witness upon a matter that has no bearing upon the complaint made here.

This is a violation of Paragraphs 1 and 5 of Section 8.

Trial Examiner Lyons: I do not think the question asked for his conclusion, it asked what happened.

He said something which refers to facts relating to other industries and activities in the city. Those will be regarded

by me as of no importance unless they are subsequently connected up with this strike, and counsel has assured me that he is going to connect it up.

If he does I will give it what value it deserves; if he does not, I will disregard it.

Mr. Jaburek: Well, our objection is in to the question, if the Examiner please.

Trial Examiner Lyons: Read the question please.

(The question referred to was read by the reporter as above recorded.)

Trial Examiner Lyons: I admit the question and answer subject to its being connected up, and your objection is noted.

Mr. Jaburek: Yes, thank you.

Q. (By Mr. Nicoson) Do you know what the reason or the cause was that caused the calling of the labor holiday?

A. Yes, sir.

Q. State what that cause was.

Mr. Jaburek: That is objected to.—

Trial Examiner Lyons: Well,—

Mr. Jaburek: (Continuing)—it is incompetent, irrelevant and immaterial.

Trial Examiner Lyons: That is a bit general, Mr. Nicoson. Can you not lead up to it by some specific questions which will bring it a little closer to the subject?

Mr. Nicoson: If the Examiner please, if he is permitted to answer that question, in my opinion he will connect the 105 holiday with the Stamping Company situation.

Trial Examiner Lyons: But I think you ought to frame the question so he will have to do it. You said what led up to it. There may have been things happened in adjoining cities, there may have been things happened in various persons' households that led up to it, and that would have no bearing here.

Can you not put a question that will bring it a little closer so he will have to limit himself to relevant matters?

Q. (By Mr. Nicoson) Were you in the vicinity of the Columbian Enameling and Stamping plant on the morning of July 19th?

A. Yes, sir.

Q. Did you observe any police cars come up there on that morning?

A. Yes, sir.

Q. How many police cars were there?

A. I cannot state exactly.

Q. About how many in your best recollection?

A. Four.

Q. And what was done when those police cars came there—
strike that.

Did those police cars come to the 19th Street gate of the
Stamping mills?

A. Yes, sir.

Q. What was done when those police cars arrived?

A. They escorted two trucks inside the gate.

106 Q. Just tell what the police did.

A. The police held guns on the few pickets while
two trucks went in the gate, through the gate.

Q. Did you see what was in those trucks?

A. Yes, sir.

Q. What was in those trucks?

A. Men.

Q. Did you know for what purpose they were being taken
in there?

A. Yes, sir.

Q. What was the purpose?

A. To break the strike.

Mr. Jaburek: Objected to as stating his conclusion, break
the strike.

Trial Examiner Lyons: Of course he was asked if he knew
the purpose and he said he did. He was asked what the pur-
pose was. Without meaning to limit you, it seems to me the
objection should come to his being asked that question. It is
a proper answer I think.

Mr. Jaburek: Well, his answer is a conclusion. Those men
evidently went in there to work, but to say they went there
to break the strike puts his construction on it. Puts his con-
struction on the reason why they went in there.

Trial Examiner Lyons: He was asked what the purpose
was for them going in. His answer may be wrong, but it
107 is responsive.

I do not know how much importance this will have in
my determination of this case, but it is a responsive answer
to a question which might have been objected to.

Proceed, Mr. Nicoson.

Q. (By Mr. Nicoson) Was there any connection between
the entry of these truckloads of men and the calling of a gen-
eral strike, if you know?

A. The general strike was called out of sympathy to the strike being carried on at the Stamping mills, out of sympathy with the workers.

Q. Was that the only reason the strike was called?

A. No, sir.

Q. What was the further reason?

A. Protest against city administration for their cooperation with the strike-breaking agency in escorting these two truckloads of men into the mill.

Mr. Jaburek: Now, if the Court please, I move that all of this testimony be stricken as not being relevant to the issues here.

A protest against the city for the city having done something.

Trial Examiner Lyons: I really do not see how that is relevant.

Mr. Nicoson: It is not.

108 Trial Examiner Lyons: And it may be stricken out.

Q. (By Mr. Nicoson) Was there any further protest caused by this strike?

Trial Examiner Lyons: What was that question please?

Mr. Nicoson: Strike that, that is wrong.

Q. (By Mr. Nicoson) Was there any further reason for this general strike, if you know?

Mr. Jaburek: The same objection, if the Examiner please, calls for a conclusion of this witness.

Mr. Nicoson: I ask if he knew. If he does not know he can say so.

Trial Examiner Lyons: Ask him if he knows; he can answer that yes or no.

The Witness: Not that I can think of at the moment.

Q. (By Mr. Nicoson) Do you know how long these men stayed in the plant?

Trial Examiner Lyons: Do you mean the men that were carried in in the trucks?

Mr. Nicoson: That went in there in the trucks.

Trial Examiner Lyons: Yes.

The Witness: I think some of them are still there.

Q. (By Mr. Nicoson) Do you know whether they are still there or not?

A. No.

Q. Do you know how many went into the plant at this 109 particular time?

A. Approximately 50.

Q. In those two trucks?

A. That is right.

Q. You do not know whether they are there now or not?

A. I do not.

Q. And did anything further happen on the 22nd day of July 1935?

A. Martial law was declared.

Q. And after the declaration of martial law, what followed, if you know?

Trial Examiner Lyons: Confine yourself with matters with reference to your controversy if there was one, between you and the respondent company.

The Witness: The employment office opened up.

Q. (By Mr. Nicoson) On the 22nd day of July, now, what happened around the plant if anything, further than what you have already testified, after the declaration of martial law?

A. Nothing until troops came in.

Q. Were soldiers around the plant?

A. Troops came in, yes.

Q. What did they do?

A. They ran everybody away.

Q. Previous to that time, had you and your organization been conducting a picket line at that place?

110 A. Yes, sir.

Q. And the soldiers prohibited you from conducting your picket line?

A. Yes, sir.

Q. And ran you away from the mill?

A. Yes, sir.

Q. About the 23rd day of July were there any departmental labor men contacting you?

A. Two.

Q. Do you know what their names were?

A. A fellow by the name of Richardson and a man by the name of Scheck.

Q. Did you make any request of those men?

A. Yes, sir.

Q. What did you request of them?

A. We requested that they try and open up negotiations.

Mr. Jaburek: That is objected to, if the Examiner please, what request this witness or his union made upon these government men. We do not know how that is binding upon the respondent in this case, or how it is material.

111 Mr. Nicoson: We will show you if you do not get excited.

Trial Examiner Lyons: It does seem remote, but I won't order you to change the order of your trial. If you can make that material, connect it up in some way with the issues in this case, I will admit it on that assurance.

Mr. Nicoson: Will you read the question, please?

(The question referred to was read by the Reporter.)

A. We requested that they arrange a meeting between the representatives of the union and the company.

Q. (By Mr. Nicoson) Did they so do?

A. No, sir.

Q. Did you have any further conversation with Mr. Richardson and Mr. Scheck about that request.

Mr. Jaburek: The same objection, if the Examiner please.

Trial Examiner Lyons: Well, that question may be answered yes or no.

The Witness: Yes, sir.

Q. (By Mr. Nicoson) What was the conversation?

Mr. Jaburek: Now, our objection.

Trial Examiner Lyons: Now it seems to me—I suppose what you are trying to show by this, and if I am wrong either counsel will correct me, is attempt on the part of the organization which this witness represents, to obtain a confer-

112 ence with the respondent, and if they asked the Department of Labor men or somebody else to arrange a conference, and those men tried to arrange a conference, it would be important for me to know whether or not a conference resulted from those requests, but detail of his conversation with these labor men may get into some matter that would not be proper for me to hear.

Mr. Nicoson: That was the purpose of the question, if the Examiner please, to show what happened as a result of this request, that there was a contact, or attempted contact and they reported back, and I am trying to show now by this witness what they told him as a result of their efforts of mediation.

Trial Examiner Lyons: I think the substance of that is admissible and relevant. You asked him what his conversation was with these labor department men. Now he may have in that conversation, said some things to them which are not proper evidence in this case. Self-serving statements made to these labor men would not be of any consequence, and ought not to be put in.

Perhaps you can frame your question in some such way as this, what, if anything did you say to them about arranging a conference? If you put it that way, I will admit it.

Mr. Nicoson: I believe that is already in the record. Would you mind going back and reading a couple of questions?

(The questions and answers referred to were read 113 by the reporter as follows:)

"Q. Did you make any request of those men?

"A. Yes, sir.

"Q. What did you request of them?

"A. We requested that they try and open up negotiations."

Trial Examiner Lyons: Well, I overlooked the fact that you had said something about that request. In that form I will admit it,—

Mr. Jaburek: We think it is—

Trial Examiner Lyons: —cautioning the witness not to say anything except exactly what the question calls for.

Mr. Jaburek: Except, Mr. Examiner, it is our contention that what passed between them outside of our hearing is not binding upon us.

Trial Examiner Lyons: Well, I would not hold it binding upon you except merely to show the fact, that they did, if they did, make an attempt to get in touch with your company for the purpose of calling a conference.

Mr. Jaburek: But the complaint charges us with refusing to bargain on three specific dates only. It is not shown here that this is on one of those three dates?

Trial Examiner Lyons: No. Assuming that that is so, which I do not know, because I am not looking at the complaint just now, a refusal to bargain is a fact to be sure, but it requires certain inferences to determine whether a refusal was actually made or whether certain conversations constitute refusal.

Now what the party charged with refusal may have said or done on another occasion may assist me in determining whether or not what happened on the occasion stated in the complaint was refusal.

Mr. Jaburek: And one more point, if the Examiner please. There is no showing whether this was before July 5th or after July 5th. If it was before July 5th, then it would not have any binding effect at all, assuming it has some binding effect after July 5th.

Trial Examiner Lyons: Upon what theory do you base that contention?

Mr. Jaburek: That the Act was passed on July 5th, 1935, the National Labor Relations Act.

Trial Examiner Lyons: Well, to be sure, no act committed before July 5th could in itself be an unfair labor practice within the meaning of this Act, but an act committed before July 5th might color an act committed after July 5th. So that one hearing the evidence might determine whether the act committed subsequent to July 5th was in effect what it is declared to be.

If all it shows is something that happened before July 5th, your point would be well taken, but if it shows something of similar character that has taken place after July 5th, 115 then it is competent for me to hear what happened before July 5th in order for me to determine what the legal effect is of what happened after that date.

Mr. Jaburek: But the legal effect of such testimony would be to give retroactive effect to the act.

Trial Examiner Lyons: I cannot agree with you on that. If that is the grounds of the objection, I shall overrule it.

Mr. Jaburek: That is one ground, and the other is, I have already stated that this is a conversation between two other parties outside of our presence, so that we have no way of ascertaining as to the truth of the conversation.

Trial Examiner Lyons: As to that, I will rule that unless it is shown that the communication made to the labor men was carried to your company, it will be stricken out and not considered.

Mr. Nicoson: I think that can be shown by another witness.

Trial Examiner Lyons: Well, I expected that statement. Proceed.

The Witness: Mr. Richardson informed us that he was unable to arrange a meeting between the union and the company.

Q. (By Mr. Nicoson) Did he give any reason?

A. It was on account of the management's unwillingness to participate in such a meeting.

Q. And that was on about the 23rd day of July, 1935, 116 that this happened?

A. Thereabouts.

Q. Now, were there any further attempts on the part of the organization to meet with the company on this question?

A. Yes, sir. Another attempt was made towards the latter part of September.

Mr. Nicoson: Will you mark this Petitioner's Exhibit No. 5 for identification?

(The document referred to was marked Petitioner's Exhibit No. 5 for identification.)

Q. (By Mr. Nicoson) I hand you a paper marked petitioner's Exhibit 5 for identification, and ask you to examine it.

(The exhibit was passed to the witness.)

Q. (By Mr. Nicoson) Will you state if you know in a general way, what that is?

A. That is a request from the union to the company for a meeting.

Mr. Nicoson: Counsel for respondent admits receipt of this, and petitioner now offers this in evidence.

Mr. Jaburek: No objection.

Trial Examiner Lyons: It will be received and marked PETITIONER'S EXHIBIT NO. 5.

(The document referred to was received in evidence and marked PETITIONER'S EXHIBIT 5, witness Cox.)

117 Q. (By Mr. Nicoson) Did you ever receive an answer to that communication?

A. No, sir.

Trial Examiner Lyons: Do these letters—if you have a number, will it not save time if you show them to counsel?

Mr. Nicoson: It is all right with me, if he will agree.

Trial Examiner Lyons: I beg pardon!

Mr. Nicoson: If he does not object, it is all right with me.

Trial Examiner Lyons: You do it your own way, but it seems that there has not been much of any objection.

Mr. Jaburek: No objection to this one, either.

Mr. Nicoson: We now offer Petitioner's Exhibit No. 6 in evidence.

Trial Examiner Lyons: It will be received and marked PETITIONER'S EXHIBIT NO. 6.

(The document referred to was received in evidence and marked PETITIONER'S EXHIBIT NO. 6, Witness Cox.)

Trial Examiner Lyons: Can you make a short statement as to what it happens to be?

Mr. Nicoson: It is a request—

Trial Examiner Lyons: It is a letter dated October 11, 1935, signed L. G. Brown, M. G. Heuer and Otis Cox.

118 Mr. Nicoson: I am going to ask him some questions about it after it is introduced.

Trial Examiner Lyons: It is addressed to Mr. Gorby,

president of the Columbian Enameling and Stamping Company.

Mr. Nicoson: I think he will know what this is.

Q. (By Mr. Nicoson) I hand you petitioner's exhibit No. 6 which has been admitted in evidence, and ask you if you know what it is.

A. Yes, sir.

Q. Was there ever any answer received to that letter, Mr. Cox?

A. No, sir.

Q. Mr. Nicoson: I believe that is all. My may cross examine.

Cross-Examination.

Q. (By Mr. Jaburek) Mr. Cox, you say that that exhibit 1—that Petitioner's Exhibit No. 1 is a reply to the matter discussed at the November meeting, is that correct?

A. I believe it was in November, yes.

Q. And the November meeting was the first meeting which was held where any matters were discussed, is that correct?

A. That is not what I said, no.

Q. You said the first meeting was held in November. Do you want to correct your testimony?

A. The first meeting relative to that was held in November.

Q. Will you look at that again, please?

119 (The exhibit was passed to the witness.)

Q. (By Mr. Jaburek) As a matter of fact, isn't this letter of January 21, 1935, a reply to the union's proposal made on January 4, 1935?

A. I think not.

Mr. Jaburek: Mark this Respondent's exhibit 1 for identification.

(The document was marked Respondent's Exhibit 1 for identification.)

Q. (By Mr. Jaburek) I show you a two page exhibit marked respondent's exhibit 1 for identification, consisting of some five or six paragraphs, the first of which reads:

"The union agrees to cooperate with the company in mutual aid for efficiency", and ask you if you ever saw that before?

A. Yes.

Q. (By Trial Examiner Lyons) The answer is yes?

A. Yes, sir.

Q. (By Mr. Jaburek) Isn't this a paper that was submitted to the company on January 4, 1935?

A. I don't remember the exact date.

Q. Do you know who presented it to the company?

A. Yes, sir.

Q. Who was it?

A. Morris Heuer, myself and the entire committee.

120 Q. By committee you mean scale company?

Trial Examiner Lyons: Scale committee.

Q. (By Mr. Jaburek) Scale committee, excuse me, that is who you mean, the scale committee?

A. Yes, sir.

Q. You do not recall when it was submitted?

A. I do not, exactly.

Q. Where did this meeting in November take place?

A. In the office of William Gorby.

Q. Mr. Taylor was present at that time, was he not?

A. He was present at two or three of our meetings; not always.

Q. The first thing that came up at that meeting was a demand by Mr. Taylor for a closed shop, wasn't it?

A. What meeting?

Q. This November meeting.

A. I don't remember.

Q. And wasn't that meeting held on November 26th, 1934?

A. I can't remember that, either.

Q. And wasn't it a meeting that originally was set for November 23, 1934?

A. I can't remember.

Q. And wasn't it a meeting that was called upon the written request of the union for a modification of the agreement?

A. I remember some such meeting, but I don't remember the date.

121 Q. And after making a demand for the closed shop, Mr. Taylor also made a demand for a 20 per cent increase, didn't he?

A. I don't remember that.

Q. Hadn't there been some letters and some meetings in which a checkoff was mentioned?

A. Oh, earlier in the year, yes.

Q. But after July 14, 1934?

A. Yes.

Trial Examiner Lyons: May I interrupt for just a moment?

Mr. Jaburek: Yes.

Trial Examiner Lyons: Will you read me the question which preceded the last question?

(The question was read by the reporter as above recorded.)

Q. (By Trial Examiner Lyons) You say you do not remember, do you mean you do not remember whether he did or not, or you do not remember his saying it?

A. I don't remember him saying it.

Q. Do you remember his saying anything about that subject?

A. No, sir.

Trial Examiner Lyons: I hope I have not disturbed your line of examination.

Q. (By Mr. Jaburek) And who is Mr. Taylor?

A. Mr. Taylor is a representative of the American Federation of Labor.

122 Q. What is his title, if you know?

A. That is it.

Q. Well, he is—

Trial Examiner Lyons: What did he say?

Mr. Jaburek: "That is it". Representative of the American Federation of Labor.

Trial Examiner Lyons: And that is the title?

Q. (By Mr. Jaburek) He also has an office in the Indiana Federation of Labor, has he not?

A. Oh, I beg pardon. He is president of the state federation.

Q. (By Trial Examiner Lyons) President of the state branch of the American Federation of Labor in Indiana, is that right?

A. Yes.

Q. (By Mr. Jaburek) And the request for the closed shop was refused, was it not?

A. It must have been, yes, sir.

Q. And the request for a twenty per cent increase was refused, was it not?

A. Well, sir, we never got it, so it must have been refused if it was asked for.

Q. And then Mr. Taylor said for the company representatives to forget it—forget all that had been said about the check-off system and dis-association, do you remember that?

A. No, sir.

Q. And then didn't either Mr. Taylor or some other 123 member of the scale committee ask whether or not the

stamping company would give your union assurances that Employes' Athletic Association would not be considered as a bargaining medium by the company?

A. Yes, sir.

Q. And didn't the company agree to that?

A. Yes, sir.

Q. And that is all that transpired at that meeting, is it not, in November?

A. As far as I know; I don't remember.

Q. Now look at this exhibit No. 1 for identification again.

Trial Examiner Lyons: Isn't that exhibit 1, petitioner's exhibit No. 1?

Mr. Jaburek: Exhibit 1; excuse me. It says, "Proposal, the union agrees to cooperate with the company in mutual aid for efficiency".

Was that discussed at this November meeting?

The Witness: If my dates are incorrect, it is due to a poor memory.

Q. (By Mr. Jaburek) And this proposal 2, "Foremen must report employes found lax in their duties to the committee".

Was that discussed at this November meeting?

A. They were all discussed at the time they were presented.

Q. And was this proposal also discussed at this November meeting? "In order to bring about more efficient workmanship and better cooperation, the company agrees to lay off any member of the union who becomes suspended?"

A. They were all discussed.

Q. At this November meeting?

A. Whatever meeting it was presented.

Q. (By Trial Examiner Lyons) Whatever meeting what was presented, that particular paper?

A. I was under the impression it was the November meeting, your Honor, and he said it is later than that, in the first of the year.

Q. (By Mr. Jaburek) How many members had your union in August 1934?

A. August 1934?

Q. Yes.

A. I would say four hundred and fifty, offhand.

Q. And in September, 1934?

A. September, oh, there may have been five or six in that time.

Q. (By Trial Examiner Lyons) Five or six?

A. Members.

Q. More members?

A. Yes.

Q. (By Mr. Jaburek) How many members were behind in their dues?

Mr. Nicoson: To which we object, for the reason it 125 hasn't anything to do with this situation.

Trial Examiner Lyons: What was the question?

Mr. Nicoson: He asked how many were behind in their dues.

Mr. Jaburek: Counsel brought up about membership of the union. I have a right to go into it, and I will connect it up, I think very clearly.

Trial Examiner Lyons: Well, the mere fact that they are behind in their dues, does not make them non-members, does it?

Mr. Jaburek: Oh, no, it does not make them non-members.

Trial Examiner Lyons: Then how is it competent?

Mr. Jaburek: May we have this off the record for a minute while I explain what I think actually happened?

Trial Examiner Lyons: Well, if that is the case I think counsel should be consulted outside the presence of the witness.

Mr. Nicoson: I do not know what you are going to say.

Trial Examiner Lyons: Any off record conferences ought not to be held in the presence of the witness. If it is going to be a lengthy conference, invite counsel up here and let the witness step down and I will be glad to hear you.

Mr. Jaburek: It will take a minute or two. If you will come up here, counsel, I will tell you what our theory of it is.

Trial Examiner Lyons: Off the record.

126 (There was a discussion off the record.)

Trial Examiner Lyons: Now will you please read the last question.

(The question referred to was read by the reporter as follows:)

"How many members were behind in their dues?"

Trial Examiner Lyons: And that is objected to?

Mr. Nicoson: That is objected to.

Trial Examiner Lyons: And it is excluded in the present state of the evidence.

Q. (By Mr. Jaburek) Now in July, 1935, on or about July 22 or 23, no one from your union communicated with the stamping company, did they?

A. Not directly.

Q. This charge of an alleged violation for failure to bargain as the result of a request made on July 22 or 23, 1935, is based upon your talks with the government mediators and then what they told you about what the company said, is that correct?

Mr. Niceson: We object to that, for the reason counsel draws his own conclusions as to what the complaint states, and from those conclusions attempts to direct the testimony of the witness.

I think the complaint will speak for itself and whether or not there are specific dates and specific charges of violations on specific dates. Counsel seems to be under the impression that there are specific dates stated in the complaint, but the complaint has never been before this witness and he would not know.

Trial Examiner Lyons: The question was long and involved and I would like to have it read. Perhaps that is the trouble.

(The question was read by the reporter as above recorded.)

Trial Examiner Lyons: Well, I suppose that as it now appears he is not called upon to pass upon the reason why this charge was made in the complaint because he did not draw the complaint, and I think for that reason the question is objectionable.

You may inquire whether anything other than the things you have recited took place on the date of July 23rd.

Q. (By Mr. Jaburek) On or about July 22nd or 23rd, was any other request made upon the company to bargain with the union, other than what you have already testified to?

A. No, sir.

Q. Now at this meeting on June 11, 1935, who all was present?

A. Mr. Gorby, Mr. William Gorby, Mr. Grabbe, L. G. Brown, G. M. Heuer and myself.

Q. And didn't you say at this meeting that what the union wanted was a closed shop?

A. Not exactly in those words, no.

Q. Well, what did you say?

A. That was what we wanted when we came out.

Q. What did you say—

Q. (By Trial Examiner Lyons) What was your last answer?

A. That was our demands when the strike was called.

Q. Oh.

A. A closed shop.

Trial Examiner Lyons: All right.

Q. (By Mr. Jaburek) And that was why the strike was called?

A. No, sir.

Q. Well, why was the strike called on March 23, 1935?

A. On account of the company's refusal to honor and abide by the agreement signed before the Labor Board July 14, 1934.

Q. Now when did the company refuse to abide by it? What is the first thing it did that was a violation?

A. Irrespective of the date, they refused to abide by a clause that provided for minimum days, wages, and any employees being called out and not used.

Q. And what was another reason?

A. When they refused arbitration on this disagreement, this dispute.

Q. When was arbitration refused?

A. Oh, in February, I guess.

Q. 1935!

A. 1935.

129 Q. And do you know on what points arbitration was demanded?

A. On the dispute that was existing.

Q. What was that dispute?

A. A dispute that arose over these grievances presented and contained in that exhibit, whatever you call it, No. 1 there.

Q. Calling your attention again to petitioner's exhibit No. 1, the strike was called because of the company's refusal to arbitrate these proposals, is that right?

A. The whole proposal.

Q. Contained in this exhibit No. 1 of petitioners?

A. That is it.

Q. That is right?

A. Yes.

Trial Examiner Lyons: The strike was called on what date?

Mr. Jaburek: March 23, 1935.

Q. (By Mr. Jaburek) And in addition to that the strike

was called also for the purpose of enforcing the closed shop?

A. No, sir.

Q. Did you make a statement for the newspapers at any time which was signed by yourself, Brown and Heuer?

A. Several times.

Q. Did you make a statement on July 24—please strike that last.

Calling your attention to an article appearing in the 130 Terre Haute Star for Wednesday, July 24, 1935, over the signatures of L. G. Brown, Otis Cox and M. G. Heuer, president, secretary and treasurer respectively, I ask you if you made such a statement and gave it to the paper for publication!

(The exhibit was examined by the witness.)

A. Yes, sir.

Mr. Jaburek: Will you mark this respondent's exhibit 2 for identification.

(The document referred to was marked Respondent's Exhibit No. 2 for identification.)

Mr. Jaburek: Now mark this for identification as respondent's exhibit 3.

(The document referred to was marked Respondent's Exhibit No. 3 for identification.)

Q. (By Mr. Jaburek) Calling your attention to respondent's exhibit 3 for identification, being a copy of the Terre Haute Tribune for Wednesday, August 28, 1935, directing your attention to page 13, to a statement headed "Strikers say strike at stamping mill is still on", and signed L. G. Brown, M. G. Heuer and Otis Cox, did you give that statement to the newspapers?

A. Yes, sir.

Q. Now in this last statement you say, "The strike at the stamping mill was called as a manner of protest against unbearable working conditions forced upon a number of underpaid and overtaxed employees".

Who were these employees who were underpaid and overtaxed?

A. Practically all members of the organization were among that class.

Q. Some four hundred or five hundred—between four and five hundred?

A. Yes.

Q. And what were the unbearable working conditions that were forced upon them?

A. Well, the lack of a regular working schedule, and the fact that you might be called to work and not get to work and have to go home. The favoritism shown by the various foremen. That is some of the unbearable conditions.

Q. Name a few more, if there were any more.

A. The inadequate ventilating system and the heating plant. That all went to make it unpleasant. The experimental operations carried on that kept down the already small earning capacity. That is a few of them.

Q. That about sums them up!

A. Yes, I suppose so.

Q. Now as far as the ventilating fan is concerned, that referred to one department, in the annealing department?

A. That was general.

Q. General?

132 A. As far as it was in my department. I never worked in the annealing department.

Q. In what departments was there any complaint about fans?

A. Fans?

Q. That is what you said, ventilation.

A. Heat, both heat and ventilating.

Q. What departments was there this complaint?

A. In the dipping room.

Q. Any other department?

A. Well, I don't know. That is where I worked.

Q. And how many in the dipping, how many workers in the dipping room?

A. Oh, oh, I would say offhand one hundred twenty-five or one hundred thirty.

Q. Was that matter discussed at a meeting of the scale committee?

A. I believe it was.

Q. And it was adjusted, was it not?

A. No, sir.

Q. Some months prior to the strike?

A. No, sir.

Q. And now the matter of a working schedule. Wasn't the only dispute with reference to two hours' pay because of a shutdown of the power house due to a breakage one morning?

A. Are you talking about unbearable conditions now, 133 or violation of contract?

Q. Well, I am talking about this thing that I am questioning you about.

Will you read the question, please?

(The question referred to was read by the reporter as above recorded.)

The Witness: No, sir.

Q. (By Mr. Jaburek) What were the other disputes?

A. Working double shifts, working overtime, working short time one night and overtime the next.

Q. And was that grievance taken up at any meeting of your scale committee with the management?

A. It must have been.

Trial Examiner Lyons: What was the answer?

Mr. Jaburek: "It must have been".

The Witness: It must have been.

Q. (By Mr. Jaburek) Do you know that it was?

A. No, sir.

Q. Now about this favoritism that you mentioned, when was that taken up with the management by your scale committee?

A. Two or three different occasions.

Q. Well, when was the first time?

A. Oh, I imagine along in the fall when we started talking about that thing, whenever it was.

Q. When was the last time?

134 That is about the only time.

Q. The only time?

A. Yes. I can't remember specific dates.

Q. Now who was discriminated against?

A. I don't know any outstanding cases. I only know of the ones that were being showed favoritism and getting—

Q. Who was being showed favoritism?

A. I don't know any names, it was rumored, just general talk.

Q. You do not know of any such case definitely?

A. Not offhand, no.

Q. And who was doing the—who was playing the favoritism?

A. The foremen.

Q. Which ones?

A. Well, practically all of them. That was the foremen of the piecework department.

Q. But you do not know the names of any persons who were discriminated against?

A. Yes, I remember two or three different instances in my own department.

Q. Let us have those names of the persons who either were favored or those who suffered as a result of such favoritism.

A. A fellow by the name of Royer; another fellow by the name of Hatfield.

Q. Hatfield?

A. Yes, sir.

135 Q. When was Royer—when did this Royer incident happen?

A. Oh, it was continual.

Q. Between what periods?

A. About the last six months that we worked, I guess.

Q. And Hatfield—the Hatfield case?

A. The same.

Q. And what were the particular facts in these cases?

A. I don't know the particular facts except that they just did not get the breaks like they should have. They had a spot and that is where they stayed.

Q. And who was the foreman involved in these two cases?

A. Charley Gossage and Monniger.

Q. And are those cases mentioned in this petitioner's exhibit No. 1?

A. Not that I know of.

Q. And those are the matters—those matters which are contained in petitioner's exhibit No. 1 are the ones—strike that.

The proposals contained in petitioner's Exhibit No. 1 are the grievances of the union which led to the strike, are they not?

A. Yes, sir.

Q. Now going back to this meeting of June 11, 1935.

Trial Examiner Lyons: Mr. Jaburek, we have been going quite a while now, and I think perhaps a ten minutes' 136 recess will be appreciated, if you do not mind being interrupted.

Mr. Jaburek: Oh, no.

Trial Examiner Lyons: We will take a recess until ten minutes of four.

(Thereupon a short recess was taken after which the proceedings were resumed as follows:)

Trial Examiner Lyons: For the benefit of anyone here who does not know it, the hearing will continue until five o'clock.

All right, Mr. Jaburek.

Q. (By Mr. Jaburek) Mr. Cox, referring again to this meeting of June 11, between your committee, Brown, Heuer and yourself, and representatives of the company, is it not true that at the close of this meeting Mr. Gorby repeated what he had said earlier in the meeting that if the workers wanted to go back to work the company was agreeable?

A. Not in those words, no.

Q. Well, just what did he say then?

Trial Examiner Lyons: You are referring now to what he said at the close of the meeting?

Mr. Jaburek: I am talking now as of the close of this meeting.

Trial Examiner Lyons: Yes.

The Witness: He said that he would take all the employees back without discrimination at the same wages that they 137 were receiving when they came back, but without union recognition or agreement.

Q. (By Mr. Jaburek) And what did you reply?

A. We said that we couldn't countenance such a proposal as that.

Q. Did you not answer that you would not return to work except under your own conditions?

A. No, sir.

Q. Is it not a fact that Heuer also made the same remark?

A. No, sir.

Q. And is it not true that then the meeting closed?

A. The meeting closed.

Mr. Jaburek: That is all.

Mr. Nicoson: I believe I have no further questions.

Q. (By Trial Examiner Lyons) Mr. Cox, you hold the office of president of the union?

A. Secretary.

Q. Secretary?

A. Yes, sir.

Q. Can you give us any more definite information about the number of members of that union than you have already given us, between four hundred and fifty and five hundred, I think you said, in August, and then about five or six more members I think you said, in September, 1934.

How many were there in June, 1935?

138 A. In June?

Q. Yes.

A. I would say about four hundred—well, the only way I would have to tell—

Q. Have you some record or something, that would enable you to tell us?

A. Yes, sir.

Q. Is that here in the courtroom?

A. No, sir.

Q. Can you have that tomorrow when we reconvene?

A. Yes, sir.

Q. I do not mean the record necessarily, but the fact.

A. Yes, sir.

Q. How many employees were there in the Columbian Enameling and Stamping Works at that time?

A. There were approximately six hundred throughout the plant.

Q. Was the union membership limited to any particular departments of the plant?

A. To production workers only.

Q. In other words, it did not include the clerical workers?

A. Nor the foremen.

Q. Nor the foremen?

A. No, sir.

Q. Can you tell us how many production workers there were who could have been in the union if they so desired?

139 A. Oh, a few over five hundred. We had at one time four hundred and eighty-seven in your union.

Q. You had at one time in the plan you mean, workers, four hundred and eighty-seven that were members of the union?

A. Yes, sir.

Q. Members of the union?

A. Yes, sir.

Q. And you think at that time there were about five hundred—

A. I would imagine.

Q. (Continuing) —employees in the production part of the plant, other than foremen?

A. Yes.

Trial Examiner Lyons: I think that is all. If you find on examination of your records that you are wrong about any of these figures, you will have a chance to correct them tomorrow.

The Witness: All right, sir.

Trial Examiner Lyons: That is all.
(Witness excused.)

Nicoson: Now, if the Examiner please, I want to depart just a bit with this one witness from the principle I have been conducting here for the reason that the witness wants to be in another place tomorrow and I would like to introduce him at this time.

Trial Examiner Lyons: Oh, yes, anything of that sort 140 is agreeable to me unless it is objected to.

Mr. Jaburek: No objection.

Mr. Nicoson: I will call Mr. Bordman.

WILLIAM E. BORDMAN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Nicoson) Will you state your full name, please?

A. William E. Bordman.

Q. Where do you live?

A. 2514 North 15th Street, Terre Haute.

Q. Prior to the 23rd of March, 1935, were you working for the Columbian Enameling and Stamping Company?

A. I was.

Q. What was your capacity at that time?

A. Well, I hardly know how to explain it. I was an experimental man more than anything else.

Q. Previous to that time how long had you been in the employ of the company?

A. About seven years.

Q. As an experimental man what were your duties?

A. My duties were to check all incoming and outgoing materials. Not so much outgoing as incoming, such as car-load lots, of things that came in. Then I had all new colors to run on ware, and if the color came out right and was accepted, that was the standard color from that time on.

Q. Were you acquainted with the process of mixing and compounding enamel?

A. Yes, sir.

Q. At that time or about that time—strike that.

Was there more than one kind of enamel used in this plant?

A. Yes, sir.

Q. How many were there, if you remember?

A. I couldn't estimate how many there were. They were changing all of the time.

Q. You were acquainted, I believe you said, with the process of mixing?

A. Yes, sir.

Q. And the ingredients that went into the enamel?

A. Yes, sir.

Q. Will you describe the process from the time that you take the raw materials which enter into the composition and it becomes the finished enameled product ready to be applied to the ware.

A. Do you mean the entire process?

Q. Yes.

A. Come in in the shape of different enamel materials, raw materials, such as feldspar, borax and so forth. And these were mixed by percentage according to the enamel formula and were then taken to a smelting furnace. They were melted at certain temperatures, and broken up in a water box.

I mean after the enamel assumed a liquid consistency it was poured into a box of water to break it up further. It was then taken from there into the mill room and this enamel was rolled in a ball mill, pebble mill. That is a huge cylinder filled with an amount of rock to break this enamel up into fine enamel and by the addition of water and of clays to hold it in suspension.

And if it was to be colored enamel, the oxide determined the color and was added at the mill.

This in turn was taken from the mill and placed in a dipping tank and a steel ware pickled ready to receive the enamel was dipped into this enamel by the girls at that time who were the dippers, and also men at night who were ground coat dippers. That was the first coat it received. From there it was dried, placed on the chain and run through the muffle furnace at a certain temperature, and when it came from the muffle furnace it was a finished product.

Q. Now then a step back there, prior to the dipping process. The enamel prior to being applied to the ware, what is its consistency?

A. You mean after the melting process?

Q. Just at the time it was ready to be applied to the ware?
A. Well, the different shapes determine the consistency of the enamel.

143 Q. (By Trial Examiner Lyons) Different shapes of utensils to be dipped into it?

A. Yes.

Q. (By Mr. Nicoson) Is it liquid or solid?

A. It is liquid.

Q. Do you know of your own knowledge from whence the different articles that go into the mixture of enamel come from?

A. Only in so far as checking bills of lading and car numbers and so forth.

Q. Do you know where soda ash comes from?

A. If I remember correctly, soda ash comes from Wyandott, Michigan.

Q. Do you know where Titanium Oxide comes from?

A. Titanium Oxide comes from the Titanium Alloy Manufacturing Company. Where located, I am not certain.

Q. If you please, Mr. Witness, in answering these questions, refrain from entering or mentioning the names of the shipper. You may state from what town and state they come, but do not state who the shippers are.

Trial Examiner Lyons: Perhaps at this time some one could tell us where that last element comes from?

Mr. Jaburek: Niagara Falls, New York.

Q. (By Mr. Nicoson) And Antimony Oxide?

A. From the same place.

Q. And Borax?

144 A. Borax, I know the name of the company, but I couldn't tell you where it comes from.

Q. Kryolith, where does that come from?

A. The only known source of Kryolith is Greenland.

Q. Is that peninsula?

A. I should judge so.

Q. Up north. It is not a town in the United States?

A. That is a country.

Q. It is a country?

A. Yes, sir.

Q. And the Feldspar, where did that come from?

A. Feldspar, I could not tell you.

Q. Do you know where Fluorspar comes from?

A. No, sir.

Q. Magnesium sulphate?

A. Some Magnesium Sulphate from Niagara Falls.

Q. That is in the state of New York.

A. Yes, sir.

Q. Or is it in Canada?

A. It is in New York.

Q. O'clay?

A. O'clay from Lake Okeechobee, Florida.

Q. Kentucky Ball clay?

A. From the state of Kentucky.

Q. I believe you stated that you applied a certain kind of oxide to give the wares a different color?
145

A. Yes, sir.

Q. Was there a certain kind of an oxide that was to give a different color?

A. Yes, sir.

Q. Where were those oxides from?

A. From various places. Some from Chicago, some from Pittsburgh, Pennsylvania. I believe some from Newark, New Jersey.

Q. To your knowledge did any of them come from within the state of Indiana?

A. Not to my knowledge.

Q. Now are you also familiar with the operation which is called the furnace room?

A. Yes, sir.

Q. I wish you would go into a little more detail and describe—strike that.

In more detail, I wish you would describe, if you know, the process known as dipping, of which you have spoken.

A. Well, as I said before, the enamel slip is determined, the consistency of it is determined by the shape of the steel utensil that is dipped into the enamel. A utensil that is flat, sort of wash basin affair, the slip is a good deal different, well, from say, a coffee pot or percolater.

Q. By slip do you mean the ability of the metal to retain?

A. No, sir, I mean the consistency of the enamel
146 when you place that utensil in it. That is prepared by a man that does that. He is called the enamel stirrer, for the different shapes prior to enameling.

Well, the dipping room consists of a long furnace chain that is endless. It runs into the furnace, out the back, and around and comes out continually. There is a system of hocks and racks to receive this ware on this chain.

The dipping tanks are lined up along the chain, and the people who do the dipping stand there, dip this ware in this enamel slip, and if it has a bead, that is a black trim, that trim is wiped off, the ware is picked up and hanged on this chain. This chain goes to what they call the beader boys. They have a different color of enamel that goes on this utensil as a trim. Some cases, blue, black or green, whatever the case may be. And they in turn take it off this one chain and bead it and hang it on the other chain and it continues on into the furnace.

Then they have a sorting room where the chain emerges from the end of the furnace after proceeding from the muffle and they take the finished product off the chain and sort it, and grade it—sort it according to whatever grade it should be.

Q. Do they apply more than one application of this enamel?

A. Some wares.

Q. And after each application of the enamel does it 147 go back to the furnace?

A. If it gets another coat of enamel it goes through the furnace again.

Q. Prior to the application of the enamel, it goes through an acetic acid bath, does it not?

A. No, sir, through a sulphuric acid bath.

Q. How long is it left in that bath?

A. Various length of time, according to the kind of ware it is. They have a system worked out, well, it depends practically more or less on the knowledge of the man that is doing the pickling. That is what we term pickling.

Q. Do you know where this sulphuric acid comes from?

A. No, sir, I do not.

Q. Were you acquainted with the operation of what we called the press room?

A. Yes, sir.

Q. Do you know anything about the steel that goes into the press room?

A. Other than what I have run into during my experimental work, and that is the source of the steel more than any other thing.

Q. How much experience have you had in and around the press room?

A. Well, I have been in and around it for seven years, the

same as I have the rest of the plant.

148 Q. Can you describe a piece of metal when it comes in from the sheet, through the press room up to the time it is ready for the enamel?

A. I will do my best. It comes in the form of flat sheets, it is first cut circular. The largest circle that can be made from the flat sheet with the least waste. All—

Q. Allow me to interrupt. Are all of these sheets the same size?

A. No, sir, they come in different sizes.

Q. The sheets are cut for different size ware prior to coming to the factory?

A. I should think so.

Trial Examiner Lyons: Prior to coming into the factory, you say?

Mr. Nicoson: Before they come into the factory.

Trial Examiner Lyons: That is, they have been cut by some other agency than employes of this factory, is that right?

The Witness: Yes, sir, that is right. From there it goes to the first press, which is the dies, cast in whichever shape they are going to press. In some instances it takes three or four presses with an annealing between presses.

Q. Could you be just a little more specific as to this? I see you understand it, but I am afraid it will not be clear in the record.

A. Certain shapes require a longer pull to finish the 149 shape than the others. Consequently you have to have a heavier metal, and in pulling this if it wasn't annealed to soften in its own press, that is considered a draw each time, it would be what they call a draw break. In other words, the steel would not stand the strain and it would break apart during this press.

Then they have what they call a heading lathe. I really could not explain it to you; you have to see it to understand.

Q. That is where they make the ware convex?

A. Yes, sir. From there the majority of the ware is finally annealed through the hot annealing furnace and then taken to the enameling room.

Q. Sometimes it becomes necessary for handles or something to be put on this ware?

A. Yes, sir.

Q. Is that another operation?

A. Yes, sir.

Q. Would you mind describing how these handles are attached?

A. They are attached by a spot welder, a spot welding process.

Q. Now as to the bead of the ware, is there a machine that turns the edge over?

A. Yes, sir.

Q. So as to construct the bead?

A. Yes, sir. That is another operation.

150 Q. That is another operation after the draws—it has come off the press?

A. Yes, sir.

Q. And it goes to the machine that turns down the edges?

A. Yes, sir.

Q. Then the handles are attached, is that right?

A. Yes, sir.

Q. Then it goes into the pickling room?

A. That is right.

Q. From there it follows into the dipping?

A. No, sir. To the dent room, goes to inspectors who see that no dents are left in it, because a dented piece of ware would not be much good after enameled. From there it goes to the dipper.

Q. Where dented, is that thrown out?

A. No, sir, that is repaired by tools which take the dents out.

Q. Take the dents out?

A. Yes, sir.

Q. Where it has dents, in it it will not retain the enamel?

A. Yes, it will retain the enamel, but it will also retain the dents.

Q. Have you any idea from whence this sheet steel comes?

A. In my experimental work I have run across steel from Youngstown, Ohio, and Wheeling, West Virginia. They 151 have two or three sources from Youngstown.

Q. You have carried on experiments on the different kinds of steel as to its adaptability for what the company desired to use it?

A. No, sir, not many tests on steel.

Q. Your experimental work is mainly around the enamel?

A. The enamel shop, yes, sir.

Mr. Nicoson: I believe that is all.

Examination by Trial Examiner Lyons.

Q. (By Trial Examiner Lyons) When you say not many tests on steel, you mean you yourself have not made those tests?

A. Yes, sir.

Q. You do not mean to say they are not made in this factory.

A. They are made.

Q. But you do not know anything about it?

A. Yes, sir.

Cross-Examination.

Q. (By Mr. Jaburek) All of these various operations you have described are those which take place in the stamping company's plant here in Terre Haute, Indiana?

A. Yes, sir.

Mr. Jaburek: That is all.

Trial Examiner Lyons: That is all.

Mr. Nicoson: That is all. Thank you.

(Witness excused.)

152 Mr. Nicoson: Mr. Shaw, please.

ULYSSES SHAW, called as a witness for the Petitioner, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Nicoson) State your full name, please.

A. Ulysses Shaw.

Q. Where do you live, Mr. Shaw?

A. 2426, 6th Avenue, Terre Haute, Indiana.

Q. Were you, prior to the 23rd day of March, 1923, working in the plant of the Columbian Enameling and Stamping Company?

A. I was.

Q. Did you join the strike on that day with the rest of the employes, Mr. Shaw?

A. Not exactly on that date. I worked to the end of the month, a week afterwards.

Q. Have you ever returned to the employ of that company?

A. I beg pardon!

Q. Have you ever returned into the employ of that company?

A. No, sir.

Q. Have you ever been asked to?

A. Yes, sir.

Q. Who asked you to?

A. Joe Carter.

Q. About when did Joe Carter ask you?

A. I just disremember the date, but it is somewhere 153 a day or two before they reopened the last time.

Q. Do you know when they opened the last time?

A. Not exactly the day, no sir.

Q. Do you know what month it was in?

A. I couldn't say positively. I believe it was in June.

Q. I will ask you if the visit you had was prior or subsequent to the general strike?

A. Well, to a certain extent, yes, sir.

Q. You do not understand the question. Was the visit that you had from Carter after the general strike or before the general strike?

A. After the general strike.

Q. It was after the general strike?

A. Yes, sir.

Q. What conversation did you have with Mr. Carter concerning your return?

154 A. Mr. Carter came to the house and he knocked at the door, and I asked him to come in. He said "No"; he was motoring, couldn't get his car started, come out to the car. I went out to the car. He asked me about going back to work. I said, "No, Mr. Carter, I couldn't go back under conditions." He asked me why. I told him because I had been threatened that if I went back to work I would get my head blown off.

Q. Was that about all you had to say with Carter?

A. No, sir. He told me, he said if I didn't go back to work, it just meant my job.

Q. Did Mr. Carter mention who sent him, or why he was there, Mr. Shaw?

A. He said he was out for the—they hired him to get the plant to reopen and to get started again.

Q. Who do you mean by "they hired him?"

A. The company got him to reopen, to go back to work again.

Q. That is the Columbian Enameling & Stamping Company?

A. The Columbian Enameling & Stamping Company.
Q. Now did you have some more visitors?

A. Yes.

Q. Who were they?

A. One Mr. Kylander.

Q. Do you know who the other one was?

A. Not with him; no, sir.

Q. Who is Mr. Kylander?

155 A. He was a man worked in the polishing department.

Q. Did he hold a supervisory position? Was he a foreman of the business, or something?

A. A foreman like I take it for granted.

Q. In the polishing department, you said?

A. Yes, sir.

Q. Is that the department you worked in?

A. No, sir.

Q. When did Mr. Kylander come to see you?

A. Well, I couldn't tell you the exact date.

Q. Do you know about what date?

A. No, sir; I don't.

Q. Was it after or before the general strike?

A. After the general strike.

Q. Do you know that the general strike occurred on the 22nd of July, 1935?

A. Yes, sir.

Q. You had a conversation with Mr. Kylander at that time?

A. Yes, sir.

Q. What was said?

A. He come out to the house and he told me, he said, "I have a card for you, want you to look at it." I said, "I don't care to see it." He asked me why. I told him I had been threatened. He asked me when could I go back to work, and I told him I couldn't make him no promise.

156 Q. Did he say anything about what would happen to you if you did not go back to work?

A. Mr. Kylander didn't; no, sir.

Q. Did he say anything about if you did come back to work, about the union in the plant?

A. No, sir.

Q. Wasn't anything said about that?

A. No, sir; he didn't want to talk to me much because I was out of humor.

Mr. Nicoson: That is all.

Cross-Examination.

Q. (By Mr. Jaburek) Who were the men who threatened you?

A. Well, I couldn't tell you his name, quite a few names, I didn't know, in the plant.

Q. It was no official of the company?

A. No, sir.

Q. Was it any foreman or superintendent of the company?

A. No, he was an employe.

Q. A man of the union?

A. No, he didn't belong to no union.

Q. What department did he work in?

A. In their press room, I believe it was.

Q. Is he working for the company now?

A. No, sir.

Q. Did he go back to work after the strike ended?

157 A. I couldn't answer.

Q. What did he tell you?

A. He told me if I went—let me see, if I went in there everything would be all right, but if I went back to work, why it meant my job, he would blow my head off.

Mr. Jaburek: That is all.

Mr. Nicoson: That is all, Mr. Shaw.

(The witness was excused.)

Mr. Nicoson: I will call Paul Steuerwald.

PAUL STEUERWALD, called as a witness for the petitioner, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Nicoson) You may state your name.

A. Paul Steuerwald.

Q. Where do you live, Paul?

A. West Terre Haute, Indiana.

Q. Prior to the 23rd of March, 1935, were you working in the Columbian Enameling and Stamping Company's plant?

A. Yes, sir.

Q. Are you a member of the Employes Enameling and Stamping Union No. 19694?

A. Yes, sir.

Q. Did you join the strike on the 23rd of March?

A. Yes, sir.

Q. Have you been back to work since then?

158 A. No, sir.

Q. Now, I will ask you if, on or about the 20th day of May, 1935, you did not have a visitor?

A. Well, it wasn't just exactly a visit, we ran into each other, and he requested, not just exactly requested, but anyway we got into a conversation and the conversation led to—

Mr. Jaburek: May we have this person identified?

Trial Examiner Lyons: Yes, have him identify the person.

Q. (By Mr. Nicoson) Who was the person you were talking to?

A. Bud Hawkins.

Q. Who is Bud Hawkins?

A. He works at the stamping mill and he is foreman there.

Q. In what department did he work?

A. I don't know but I think it was—had something to do with the enamel before it was dipped, spray tables, or something.

Q. All right, now you may continue.

A. Well he told me that they were trying to get enough of the old employes together and get them to sign papers to go back to work, and for doing this, for signing these papers—the papers you signed were—one that you signed was a petition to be sent to the mayor for protection, police protection and for the workers that would go back to work. And the other one was a petition—well, you were to sign to go 159 back to work under the conditions before the organization was formed, the same wage scale, but they absolutely wouldn't recognize an organization of any kind. And in return if—well, not exactly in return, but you were to receive \$5 per week until returning to work.

Q. And did you receive any money?

A. Yes, sir.

Q. How much did you receive?

A. I don't know, it was either two or three, I don't know which.

Q. Two or three which?

A. \$5 bills.

Q. (By Trial Examiner Lyons) On different dates, different weeks, you mean?

A. I couldn't give the dates.

Q. No, but I mean, you did not get three fives at once?

A. No, sir; no.

Q. Two or three different times, less than a week apart, is that what you mean?

A. Yes, sir.

Trial Examiner Lyons: All right.

The Witness: Also, Mr. Hawkins told me the ones that agreed to go back to work under these conditions would be, well, more or less given preference. Didn't just exactly say you would get a foreman's job, or anything like that, but 160 you would be shown preference when they returned to work when they started.

Q. (By Mr. Nicoson) You got this for about a period of three weeks after that?

A. I think so.

Q. Where did you get it, did you have to go to the factory after it?

A. No, sir; a lady by the name of Lou Elliott delivered it right to the house. All you had to do was call her and she would bring it out.

Q. And who is Lou Elliott?

A. She was the nurse of the stamping mill.

Q. Do you know how they came to discontinue the five-dollar payments?

A. Well, I think I know why, but I wouldn't have gotten any more anyway, because about two weeks before the general strike I left this part of the country and went to Ohio, and I was there until about the middle of July.

Q. After you came back from Ohio, did you have any conversation with any other supervisor of the mill?

A. Not until after the troops came in and after the troops came in and they started back to work, Fred Moore and Mike Casper, Fred Moore is superintendent—

Q. Who is Fred Moore?

A. Superintendent of the four-story building, the 161 stamping mill.

Q. What is the four-story building?

A. That is the department from which the finished ware is shipped and wrapped.

Q. And stored there too?

A. And stored.

Q. And there are four stories to the building?

A. Yes, or more.

Q. This fellow is superintendent in that building, has charge of that operation?

A. Yes, sir.

Q. And who is Mike Casper?

A. He is foreman of the wrapping girls.

Q. Is he also employed in the four-story building?

A. Yes, sir.

Q. Did you have a conversation with them after the general strike?

A. Yes, sir.

Q. What was said, if anything?

A. They came to the house and asked me if I was going back to work, and I said "No." He wanted to know why. I said I would rather wait until things were settled up, and he said, "Well, we are just giving you boys first chance, the ones that signed these papers, to go back to work."

Q. (By Trial Examiner Lyons) Who said that, Moore 162 or Casper?

A. Moore. Casper didn't say anything. Casper came to the door, and asked me out to the car, and then after I went out to the car, why, Mr. Moore done all of the talking.

Q. They were both together?

A. They were both together.

Trial Examiner Lyons: I see.

The Witness: In one car.

Q. (By Mr. Niceson) Did he say how soon you would have to come back to work?

A. Well, not just exactly. After I told him that I wasn't intending to come back to work, why, he said, "Well, if you change your mind, let me know by"—I don't remember the day, but it would have been about a day or two later. I don't know, two or three days.

Q. Was there anything said if you came back to work about the union in the plant?

A. I don't believe they said anything about the organization at all at that time.

Q. Did they say anything about if you came back to work, you would have plenty of protection?

A. Yes.

Q. Did he say what kind of protection that would be?

A. Let's see, he did make—he made a statement that if I was harmed in any way going to or from work that I 163 would be given telephone numbers, all I would have to do would be to call these numbers and the parties molesting me would be taken care of. He didn't say in what manner.

Q. Do you have those telephone numbers now?

A. No, I never got them.

Q. He did not give them to you?

A. No, I was to get those when I came to the office for work.

Mr. Nicoson: I think that is all.

Cross-Examination.

Q. (By Mr. Jaburek) Who is this Miss Elliott?

A. Sir.

Q. Who is Miss Elliott?

A. Miss Elliott!

Q. Yes.

A. Miss Elliott is, or was, I don't know what she is now, she was nurse of the stamping mill.

Q. And she also did some welfare work among the families of the company, did she not?

A. That is what they called it?

Mr. Jaburek: I move that the answer should be stricken as not being responsive.

Trial Examiner Lyons: I think it may be stricken out. Ascertain from this witness if he knows what you mean by welfare work.

Mr. Nicoson: Then, we will object to the question for 164 the reason it calls for a conclusion.

Trial Examiner Lyons: Well, I suppose on cross-examination, questions calling for conclusions are not inadmissible questions.

Mr. Nicoson: All right.

Mr. Jaburek: Will you read the last question, please.

(The question was read as above recorded.)

Trial Examiner Lyons: That answer may be stricken out. If you understand what is meant by welfare work, Mr. Witness, you may state whether to your knowledge she did or did not do that sort of work.

The Witness: Do I have to answer that yes or no?

Q. (By Trial Examiner Lyons) No, you can say you do not know if you do not know. If you do know what sort of work she did except nursing, you can say that.

A. The nursing is all I know she did, while I was working at the mill.

Q. (By Mr. Jaburek) What were your financial circumstances at the time this money was given you by Miss Elliott?

Mr. Nicoson: To which we object for the reason it has

nothing to do with the question now before this Board as to what this man's financial condition was then, now, or will be in the future.

Trial Examiner Lyons: Well, it approaches closely to that.

You have brought out that money was given to him by 165 a person representing this company, \$5 a week.

Mr. Nicoson: Certainly.

Trial Examiner Lyons: Now, I assume that you intended to argue that was given in order to bind him to the company as an employe for the purpose of opening this factory without yielding to the union.

It would be competent for the respondent to show that the money was given to him for some other purpose, and for that reason, the subject, it seems to me is competent.

Perhaps the question itself is objectionable because it goes into the personal affairs of this witness with which we are not concerned.

Mr. Jaburek: That is just—

Trial Examiner Lyons: I think that question is objectionable. You may ask him something to the effect, was he receiving aid from any other source, something of that sort. Of course, we know, we have it on the record that he was out of work.

Q. (By Mr. Jaburek) When was the first \$5-bill given to you?

A. Around the first of May.

Q. And the second one?

A. Sometime still in May, about a week later.

Q. And if there was a third, when was the third one given to you?

A. Well, it was given to me, I expect, about a week 166 before I left for Ohio. And I have a telegram at home which was sent to me. I could get the date if it was necessary, but I can't call it offhand.

Q. When did you leave to go to Ohio?

A. When did I leave?

Q. Yes.

A. I can't answer that offhand.

Q. Well, your best recollection?

A. It was in the 'atter part of May.

Q. And were you working for the company at the time the strike was called?

A. Yes, sir.

Q. Now, wasn't this money given to you as a matter of relief because of your then financial condition?

Mr. Nicoson: To which we object for the same reason, he attempts to go into this witness' personal affairs.

Trial Examiner Lyons: Well, if you strike out everything after the word "relief", I will admit the question. Do you wish to put it in that form?

Mr. Jaburek: Yes.

Mr. Nicoson: May I hear the question?

Trial Examiner Lyons: Read the question with that part stricken.

(The question was read as above recorded.)

Mr. Nicoson: We will object to that for the reason 167 that still inquires into his private affairs. If we could open the door here as to if he needed relief, most certainly then his financial conditions were poor. One hand would wash the other in that case. If he needed relief, then the other questions are competent.

Trial Examiner Lyons: Well, I do not propose to let them inquire into whether he needed relief or not. He can answer whether that was given by reason of relief.

The Witness: Was given for means of relief.

Mr. Nicoson: Just a minute. I would like to note our exception.

Trial Examiner Lyons: Yes, of course, you may have an exception. The question may be answered yes or no, whether it was given you by way of relief.

The Witness: Should I tell what I think it was given for?

Trial Examiner Lyons: No, you have already stated something to that effect. Now, you are simply asked—how would this question suit you, Mr. Jaburek, was it given to you for any other purpose than that which you have already described?

Mr. Jaburek: He has not described the purpose for which it was given to him, and I want to know why it was given to him.

Trial Examiner Lyons: If you think it does not appear clearly what it was given to him for, you may have that given.

Q. (By Trial Examiner Lyons) Was it given to you by way of relief? You may answer that question yes or no, Mr. Witness, and then we will set what the next question is.

A. I don't think so, no.

Trial Examiner Lyons: All right.

Q. (By Mr. Jaburek) When Bud Hawkins called upon you, did he talk about money to you?

A. In what way?

Q. Oh, in any way.

Mr. Niceson: Oh, now, we object, "in any way".

Mr. Jaburek: Well, did he mention the subject of money. It is plain to see this witness is trying to hedge.

Mr. Niceson: He might be talking about the stock market or something like that, that would be any way.

Mr. Jaburek: All right, that way.

Trial Examiner Lyons: He says that Bud Hawkins did say something to him about money.

Mr. Niceson: Yes, but not anyway.

Mr. Jaburek: Well, this is cross-examination, and I am going into that.

Trial Examiner Lyons: Ask him if he said anything in addition.

Mr. Jaburek: This is cross-examination, if the Examiner please, and I have a right to go into that.

169 Trial Examiner Lyons: I did not think I was limiting you. I was just calling attention to the fact that it was in evidence that he did talk about money. You can go on with that and find out everything that was said about money in that conversation.

Q. (By Mr. Jaburek) What did Bud Hawkins tell you about money, about any payments made from the company?

A. All right. He said, those that signed these papers would receive five dollars per week until returning to work.

Q. And he talked to you about what date?

A. About what date?

Q. Yes.

A. No date.

Q. Do you recall, Mr. Witness, that you testified a little while ago that he talked to you about May 23, 1935?

Trial Examiner Lyons: I think there was a misunderstanding. The question you asked him previously was: did he talk to you about what date. I take from the witness' answer that he understood you about what date was he talking. You want to know on what date this conversation took place.

Mr. Jaburek: Yes, about the money.

Q. (By Trial Examiner Lyons) Do you understand the question now, Mr. Witness, when was he talking to you about money?

A. It was—well, I met him several times. It was between,

I will say between the time we came on strike and the 170 first of May. We talked several times, just meeting. He was living within a couple of blocks of my house, and at times I would have to walk past his house and we would meet and talk, and he got friendly, and that was the result of it.

Q. (By Mr. Jaburek) You had been friends for sometime?

A. Sir?

Q. You had been friends for sometime?

A. Yes.

Q. For a long period of time?

A. Approximately a year, not quite a year. I didn't know him that long, but when I first started working at the stamping mill we became acquainted.

Q. When he asked you to go back to work, or suggested to you that you go back to work, what did you tell him?

A. I told him that I needed work, but I didn't say anything about—

Trial Examiner Lyons: I think that is the answer.

The Witness: Wait a minute. What was your question?

Mr. Jaburek: Will you read the question, please.

(The question was read as above recorded.)

The Witness: I told him I was ready to go back to work.

Q. (By Mr. Jaburek) Told him you were ready to go back to work?

A. I was ready to go back to work.

171 Q. And about what date was it that you told him this?

A. Oh, I never did tell him under what conditions I would go back to work at that time, I meant I was going back to work under my own conditions.

Q. But you did not say that to him?

A. No.

Q. You simply told him that you were going back to work?

A. I was ready to go back to work, needed it bad, told him that too.

Q. You did say that?

A. Yes.

Q. Told him you were hard up?

A. Yes.

Q. Said you needed money?

A. Yes, sir.

Q. Told him you were up against it?

Mr. Nicoson: Now, to that we object.

Mr. Jaburek: This is cross-examination.

Mr. Nicoson: Getting right back in the same place we got into before.

Mr. Jaburek: All right.

Trial Examiner Lyons: Well, it is all a question of the conversation. If these things were said, they are admissible. If they were not said, they are without the scope of this inquiry.

But he has gone into a conversation and I think counsel 172 has a right to know what was said at the conversation which may throw light upon the five dollars.

Mr. Jaburek: Answer that last question.

Trial Examiner Lyons: If nothing was said, that is the end of it.

The Witness: What was the last question?

Mr. Jaburek: Will you read the question, Miss Reporter? (The question was read as above recorded.)

The Witness: Yes, I told him I was up against it.

Q. (By Mr. Jaburek) And how long after you had this conversation with him was it that Miss Elliott called upon you?

A. I really don't know.

Q. Now, what was her conversation with you at the time that she gave you the first five dollar bill?

A. Well, our conversation was, she said, "You understand that we are just trying to help the ones that are willing to go back to work?" That was the main idea.

Q. And did she say anything further?

A. That is all.

Q. Are you a married man?

A. No, sir.

Q. Is anyone dependent upon you for support?

A. Yes, sir.

Q. Who is?

A. I have a mother and a brother and myself.

173 Q. Living here also?

A. Yes, sir.

Q. In Terre Haute?

A. No, sir.

Q. And when you were employed you were sending them money, were you not?

A. Not sending, I was living with them.

Q. Where?

A. West Terre Haute.

Q. Oh, that is close by, is it?

A. Yes, sir.

Q. Now, what was your conversation with her at the time of the payment of the second bill?

A. None that I recollect.

Q. She just handed it to you?

A. That is about all.

Q. Now, on the occasion of the first payment to you of the five dollar bill, did you tell her that you were not going back to work?

A. No, I don't remember saying anything like that.

Q. And when she told you "We are giving these only to the employees who are coming back, strikers who are coming back," you did not say that you were not coming back, did you?

A. I don't remember.

Q. But you did take the five dollar bill, did you not?
174 A. Yes, sir.

Q. And at the time of her second visit, did you tell her then that you were not coming back?

A. I don't remember.

Q. But you did take the five dollar bill?

A. Yes, sir.

Q. And now if there was a third payment to you—was there as a matter of fact, a third payment?

A. I don't remember.

Q. How long have you known Moore and Casper?

A. I became acquainted with them when I started working at the stamping mill.

Q. When did you start there?

A. I worked there almost a year, I think, before they came out on strike.

Q. And when did they talk to you?

A. When did they talk to me?

Q. Yes.

A. I don't know the exact date, but it ~~was~~ right after the troops came in.

Q. Sometime—

A. Sometime right after—

Q. (Continuing) —in July?

A. (Continuing) —the troops came in; I don't remember.

Q. And they stalked to you about going back to work?
175 A. Yes, sir.

Q. Did they urge you to go back?

A. Not just exactly. They just said my old job was waiting for me.

Q. You knew the plant reopened on July 23, 1935, did you not?

Mr. Nicoson: On what date was that, please?

Mr. Jaburek: July 23, 1935.

The Witness: A. No, not positively, I don't, no. There wasn't nothing—

Q. (By Mr. Jaburek) Well, were you on the picket line at any time?

A. Yes, I was on the picket line.

Q. Were you anywhere near the employment office during the latter part of July?

A. I don't remember.

Q. Were you there during the fore part of August?

A. I don't remember.

Q. Do you recall seeing applicants for employment lined up there two or three deep?

A. No, sir.

Q. Did you see a line of them 50 or 60 feet long?

A. No, sir.

Q. Did you see applicants for employment there sometimes all day long?

176 A. No, sir.

Q. You were there at the employment office, though?

A. When?

Q. During this time I have mentioned, the latter part of July and early in August?

A. Let's see, I went to Ohio, I didn't come back until the latter part of July.

Q. That is the time we are talking about now, Mr. Witness.

A. I don't remember being up there, no.

Q. Did you ever return this money which had been given you by Miss Elliott to the company?

A. No, sir; there was an agreement made that when you started—

Trial Examiner Lyons: Just a moment, there is no question put to you now.

Mr. Jaburek: Just a minute, there is no question. That is all.

Redirect Examination.

Q. (By Mr. Nicoson): Paul, counsel has just asked you about the line two or three deep and fifty feet long, along about the 23rd or 24th of July.

Is it not a fact that at that time picketing was prohibited by the military, weren't there troops around the plant on about the 23rd or 24th of July, 1935?

A. The troops came in the day after the general strike and all picketing was prohibited. I don't remember just the 177 exact date, but I will put it that way.

Q. And you were not around the plant on those dates?

A. No.

Q. And you do not know anything about the line?

A. No, sir.

Mr. Nicoson: That is all.

Mr. Jaburek: That is all.

Trial Examiner Lyons: You may step down.
(The witness was excused.)

Mr. Nicoson: Now, does the Trial Examiner want to start in with another witness at this time?

Trial Examiner Lucas: Unless we can finish with him before five, or unless you gentlemen are willing to go on after five o'clock.

Mr. Nicoson: I doubt if we can finish before five o'clock.

Trial Examiner Lyons: How do counsel feel about taking one more witness and finishing with him?

Mr. Jaburek: It is all right with us.

Trial Examiner Lyons: Very well, we will go on.

Mr. Nicoson: Mr. Hart:

CLARENCE HART, called as a witness for the petitioner, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Nicoson): State your name, please.

178 A. Clarence Hart.

Q. Where do you live, Mr. Hart?

A. 1914 Blaine avenue.

Q. Is that in the city of Terre Haute, Indiana?

A. Yes, sir.

Q. Have you ever been employed by the Columbian Enameling and Stamping Company?

A. Yes, sir.

Q. When was the last time that you worked for the company?

A. March 30th.

Q. How long had you worked for the company?

A. Well, I had been there about four or five years, the last time; been employed there off and on since 1907, 1908.

Q. You did not join the strike then on the 23rd?

A. No, sir.

Q. What was your position?

A. Stationery engineer.

Q. You were not a member of the union?

A. Yes, sir.

Q. You were?

A. Yes, sir.

Trial Examiner Lyons: The union—call the union by number, will you?

Q. (By Mr. Nicoson): Union No. 19694?

A. Yes, sir.

179 Q. Were you ever solicited by any of the agents of the company to return to work?

A. I had a call shortly after they come out, by three men, Mr. Day, Mr. Davis and Burk.

Q. And will you tell the Board who those men are, what their capacity is at the plant, if any?

A. They are in the carpenter shop, one of them is a patternmaker, and the others are in the carpenter shop.

Q. Which is the pattern maker?

A. Mr. Day.

Q. Who are the carpenters?

A. Burke and Davis.

Q. They are both carpenters?

A. Yes, sir.

Q. Does any of the three hold a supervisory position?

A. I don't think so.

Q. Did they call on you more than once?

A. Only the one time, those fellows.

Q. Did you receive any other call?

A. Yes, sir.

Q. You may state who called on you and at what time?

A. Well, sometime along toward the middle of June, Joe Carter called at my house and wanted to know if I was ready to go back to work.

- 180 Q. Who is Lou Carter?
A. How?
Q. Who is Lou Carter?
A. Joe Carter.
Q. Well, who is Joe Carter?
A. He used to be the chief engineer.
Q. Was he your supervising officer when you were employed?
A. Not in the last three or four years.
Q. What was said, if anything at that visitation?
A. He asked me if I was ready to go to work, and I told him I was.
Q. What did he say then?
A. Well, he said he had been reinstated as chief engineer at his old position, and he was around seeing the boys and wanted to know how they felt. And I told him exactly how I felt.
Q. Did he say who sent him?
A. Well, he didn't name nobody, he said the company had reinstated him.
Q. How did you feel, Mr. Hart?
A. Well, I felt—
Mr. Jaburek: Now, just a minute, I do not think that is material, how he felt.
Mr. Nicoson: Well, he stated how he felt, I want him to state what he said.
Trial Examiner Lyons: He told Carter how he felt, I suppose. In keeping with what we have been inquiring into, he may tell what he told Carter.
Q. (By Mr. Nicoson.) You may answer, Mr. Hart.
A. I told him that I was ready to go to work whenever they got a settlement and agreement that was satisfactory. I felt sure that it could be, but I didn't feel like going in there under no guards.
Q. What do you mean by satisfactory, do you mean to yourself or to whom?
A. To everybody.
Q. Did you have any other calls?
A. None. Oh, yes, I had another call after the troops come in.
Q. Who called on you at that time?
A. Bill Freed.
Q. Who is Bill Freed?
A. He works in the ball department.

Q. Is he a foreman in there?

A. I don't think so.

Q. What did Bill have to say to you?

A. He wanted to know if I was ready to go to work, and I told him I was.

Q. What did he say?

A. He said, "Better go over and sign up" and he said, "if you are afraid to go in, the soldiers will take you to the 182 office." I told him I never went anywhere I had to go under guard.

Q. Did he say anything about what would happen to you if you would not come in?

Mr. Jaburek: Oh, just a moment. May I suggest that counsel does not lead the witness.

Trial Examiner Lyons: The rule in court usually is to exhaust the witness' recollection before you put leading questions to him. We have not been doing that, but under objection, I think perhaps we should.

Q. (By Mr. Nicoson) What further was said between you and Freed?

A. Well, he said I had to send some kind of an excuse if I did not go there and sign up.

Q. And did you send any excuse?

A. Then I asked him just what kind of an excuse, what it meant. And he said, "Well, if you don't go up and sign up, you will be black-listed." And I said, "What?" and he didn't make me no answer. He said, "I will tell you this, you have got to come in there, or you don't get a vote." I didn't ask him what that meant either because I wasn't interested either.

Q. Do you know what kind of vote he was talking about?

A. I don't know, because I didn't ask him.

Q. Now, I believe you said something if you went back 183 to work you would have protection, is that right?

A. Yes.

Q. Did he say what kind of protection?

A. He didn't say.

Q. That is after the troops were in there?

A. Yes, sir.

Q. Did he say anything about what might happen if you didn't go back to work?

Trial Examiner Lyons: Havent we been over that?

Mr. Nicoson: I don't think so.

Mr. Jaburek: Just got through with it.

Trial Examiner Lyons: I thought the witness said quite

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a bit about that. If there is anything you think—

Mr. Nicoson: There is something he ought to tell.

Trial Examiner Lyons: (Continuing) —he knows that he hasn't told. I am just calling the matter to your attention.

Mr. Nicoson: That is all.

Cross-Examination.

Q. (By Mr. Jaburek) You were a member of the union, were you, Mr. Hart?

A. Yes, sir.

Q. And in spite of these three invitations, you did not go back to work?

A. No, sir.

Q. Was anything said to you about being obliged to give up your membership in the union if you went back?

A. No, sir.

Q. Not a word said about that?

A. No, sir.

Q. Did they tell you that the workers could come back without discrimination?

A. Who?

Q. All of these people, the first three, the pattern maker and the two carpenters first?

A. They didn't say anything about that whatever.

Q. And Carter said there would be no discrimination if you went back?

A. He probably mentioned that, part of it, yes, Carter did but the others didn't.

Q. How about Bill Freed?

A. He didn't mention it either.

Q. When was this first call upon you by Day, Davis and Burk?

A. I couldn't answer exactly.

Q. Oh, your best recollection?

A. Either in the latter part of April or the first of May, somewhere in there.

Q. And the one by Carter, that was in the middle of June?

A. Something like that, yes.

Q. And when was Bill Freed?

A. Well, I couldn't give you the exact date. It was 185 after the troops come in here, some week or such matter.

Q. The troops came here just a few days before the plant reopened, isn't that so?

A. I think so.

Q. Came here about the 19th or 20th?

A. I couldn't tell you the exact date because I paid no mind to it.

Q. Well, see if you can fix the date of your conversation with Bill Freed from the day of the reopening of the plant on July 23rd?

A. It was probably a week later.

Q. About July 28th?

A. Somewhere near that, I couldn't give you no exact date because I don't remember it.

Q. So that you were visited on three different occasions, once in April or May, once in June, before the plant reopened, and once again in July a week after the plant reopened?

A. Something like that.

Q. And on each occasion you were asked to come back to work?

A. No, not on the first occasion.

Q. What happened on the first occasion?

A. They simply asked me if I was satisfied with conditions when I come out.

Q. Yes, and what did you say?

A. I said I was, I had no complaint whatever. I didn't exactly come out, they shut the plant down and I was let out.

186 Q. You had no reason for going out on strike?

A. None whatever.

Mr. Jaburek: That is all.

(The witness was excused.)

Trial Examiner Lyons: Well, we will adjourn for today.

Now, about tomorrow morning, does anybody care to come here earlier than ten o'clock in order to speed up the matter?

Mr. Jaburek: How about nine-thirty?

Mr. Nicoson: That is satisfactory.

Trial Examiner Lyons: That is all right with me. Does anybody object.

Mr. Jaburek: The representatives of the company say that they have some work they have to do in the morning, their regular work, and they have to get some of this data you asked for, and they suggest that we make it ten o'clock.

Trial Examiner Lyons: Then, we will make it ten o'clock.

Mr. Nicoson: Mr. Trial Examiner, will you make an announcement that all witnesses who have not testified today will return at ten o'clock tomorrow?

Trial Examiner Lyons: All witnesses who have not testified today, who are here will please be present tomorrow morning at ten o'clock.

187 (Whereupon at 5:05 o'clock p. m., December 9, 1935, the hearing in the above-entitled matter was adjourned to 10:00 o'clock a. m., December 10, 1935.)

188-190 • • (Cover and Index) • •

191 BEFORE THE NATIONAL LABOR RELATIONS BOARD.
• • (Caption—XI-C-7) • •

Federal Court Room,
Post Office Building,
Terre Haute, Indiana.
Tuesday, December 10, 1935.

The above entitled matter came on for further hearing pursuant to adjournment at 10:00 o'clock a. m.

Before:

Daniel M. Lyons, Trial Examiner.

Appearances:

Melvin C. Smith, Attorney on behalf of the National Labor Relations Board.

Maurice J. Nicoson, on behalf of Enameling & Stamping Mills Employees Union No. 19694.

Otto A. Jaburek, 35 East Wacker Drive, Chicago, Illinois;

Josiah T. Walker, Terre Haute, Indiana,

Louis R. Hilleary, Terre Haute, Indiana, and

Wilson N. Cox, Terre Haute, Indiana, on behalf of Columbian Enameling and Stamping Company, Respondent.

192 PROCEEDINGS.

Trial Examiner Lyons: There was no witness on the stand when we concluded, was there?

Mr. Nicoson: No.

Trial Examiner Lyons: Were there any unfinished questions from that witness?

Mr. Nicoson: Just a moment, please. Are we ready?

Trial Examiner Lyons: Yes, any time, providing counsel are ready.

Mr. Nicoson: I will call Mr. Henner.

MORRIS G. HEUER, called as a witness for the petitioner, being first duly sworn, testified as follows:

Direct Examination.

- Q. (By Mr. Nicoson) State your full name, please?
- A. Morris G. Heuer.
- Q. Where do you live?
- A. 2335 North Twelfth street, Terre Haute.
- Q. Are you a member of the Enameling & Stamping Mill Employees Union No. 19694?
- A. Yes.
- Q. Do you hold any office in that organization?
- A. I am treasurer and chairman of the scale committee.
- Q. When was the organization formed?
- A. June 14th, 1934.
- Q. What was the purpose of that organization?
- 193 A. To bargain collectively and further better conditions of the workers.
- Q. Is it a labor organization?
- A. It is.
- Q. What workers did it solicit as its members?
- A. Those of the stamping mill.
- Q. Is that the Columbian Enameling & Stamping Company?
- A. The Columbian Enameling and Stamping Company.
- Q. Did it accept membership from any other industry?
- A. It did not.
- Q. Now, after the formation of the organization on June 14th, did you have any dealings with the management of the Columbian Enameling and Stamping Company?
- A. The exact dates, I don't remember, but sometime prior to July 14th, we met the management a couple of times during that month to try to negotiate a contract for the new union.
- Q. Did a contract result from those meetings?
- A. It was an agreement with the Regional Labor Board after we had taken a strike vote, we were hailed before the Labor Board, both parties, and the agreement came out of it.
- Q. On what date was that agreement?
- A. July 14th, 1935, or 1934, I mean.
- Mr. Nicoson: Let me have Board's exhibit No. 1.
(The exhibit was passed to Mr. Nicoson.)
- Q. (By Mr. Nicoson) I hand you this paper marked

194 Board's Exhibit No. 1, which is the answer of the Columbian Enameling and Stamping Company, and direct your attention to what is marked as exhibit A, and ask you to examine it.

(The exhibit was passed to the witness.)

A. That is it.

Q. What is that?

A. It is the agreement we arrived at out of the Regional Labor Board meeting.

Q. And is this third page of the exhibit also part of that agreement, or not?

A. Yes, sir. That was sent in a day or so later, but that is part of it.

Q. No, then, after that agreement was drawn up, did you have any meetings with the management in connection with the purposes of your organization?

A. We did.

Q. When was your first meeting?

A. Along in August sometime, I think we had a couple of meetings. I don't exactly remember the dates but it was relative to a check-off system whereby we could collect our dues easier.

Q. (By Trial Examiner Lyons) That was August, 1934, was it?

A. Yes.

Q. Try to put the year in when you can.

A. All right, sir.

195 Q. (By Mr. Nicoson) Was it a proposal on behalf of the union or did it come from the management?

A. It was a proposal on behalf of the union.

Q. Was it disposed of at that time?

A. No, sir. Along about that time I was made chairman of this committee and I don't exactly remember now.

Q. What committee do you have reference to?

A. The scale committee.

Q. What is the purpose of the scale committee?

A. It is an executive committee in the union to do the dealing with the company.

Q. After that August meeting did you have further meetings with the company?

A. Yes, we met—let's see, I have got all of those dates in this memorandum of mine, if it can be used. As chairman of the committee I kept a record.

Q. You may refresh your memory.

Q. (By Trial Examiner Lyons) Could we have a little more about that August meeting, it is said in a general way in effect that nothing came of it. What did transpire?

A. We got nothing out of this meeting. It was relative to the check-off, and we received nothing from the company. We later had one on September 21 relative to the same thing.

Trial Examiner Lyons: Will you bring out by questions just how this result came about, whether there were any 196 conversations, and with whom, and what was said, if possible.

Q. (By Mr. Nicoson) Who was present at the meeting of the 21st, Mr. Heuer?

Trial Examiner Lyons: The 21st of what month?

Mr. Jaburek: The 21st of September.

Mr. Nicoson: The 21st of September, 1934.

Trial Examiner Lyons: Well, I was interested in the August meeting for the present. It seemed to me there was not enough on that for me to intelligently understand what the circumstances were.

Q. (By Mr. Nicoson) Who was present, Mr. Heuer, at the August meeting to which you have just testified?

A. I am not positive, but I believe Mr. Grabbe, Mr. Gorby, Jr. were present at that meeting.

Q. (By Trial Examiner Lyons) And who were there representing the union?

A. There was seven at that time on the scale committee, I believe.

Q. (By Mr. Nicoson) What were their names?

A. Ed. Moren, L. G. Brown, Otis Cox, Claude Peyton, Elsie Peyton. We had a change in our scale committee sometime or other, I don't know whether Redinger was one of the members, or not.

Q. (By Trial Examiner Lyons) Those you have mentioned were there?

197 A. Yes.

Q. Members of that committee?

A. And myself, I was there.

Q. (By Mr. Nicoson) State the substance of the proposal that your organization made upon the management, of which the August meeting was the result?

A. Well, we offered to pay the company to check off our dues. At first, we didn't, but after they had told us of the

cost that would be entailed to such a thing as that, we offered to pay them to check off our dues.

Q. That all transpired at the August meeting?

A. I believe so, I am not quite positive.

Q. Do you recall how much of an offer was made to pay for the check-off system?

A. I don't know how much we offered at the time, but they offered to do it later on for—

Q. Well, let us confine it to this meeting for the present. The question of the check-off system was disposed of at this meeting?

A. In August, you mean?

Q. Yes.

A. No.

Q. Then, you had—did you have a further meeting on this question?

A. On September 21st.

198 Q. Who was present at that meeting?

Trial Examiner Lyons: This was 1934?

Mr. Nicoson: 1934, yes; pardon me.

The Witness: 1934. I believe Mr. Grabbe, and Mr. Gorby, Jr., again.

Q. (By Mr. Nicoson) And who represented the organization, if anyone?

A. The same as I mentioned before, the same persons as near as I can remember.

Q. What was discussed at that meeting?

A. Oh, the check-off again, and the legality of it. Mr. Grabbe said it was illegal to check off the wages of an employe without a pay authorization deduction slip.

Q. Was there anything else discussed at that meeting?

A. No.

Q. Was the question of the check-off system disposed of at that meeting?

A. No, sir. We got a letter from the company around October 4th, or thereabouts relative to thet legality of that check-off system, and I believe that all employes received one individually, but I am not positive about that.

Trial Examiner Lyons: Is that letter in evidence?

Mr. Nicoson: It will be. Mark this petitioner's exhibit 7 for identification.

(The paper referred to was marked petitioner's exhibit 199 7 for identification.)

Q. (By Mr. Nicoson) I hand you the paper marked petitioner's exhibit 7 for identification, and ask you to examine it.

(The exhibit was passed to the witness.)

Q. (By Mr. Nicoson) You may state if you know what that is?

A. It is the company's letter to the union relative to the meeting just prior to it.

Mr. Jaburek: He does not mean what he says, does he, the company's letter to the union?

Mr. Nicoson: Is that what he said?

Mr. Jaburek: Yes, that is what he said. Better look at it again, I think.

Q. (By Mr. Nicoson) I will ask you to look at it again and see who that is addressed to.

A. Well, it is to all employes.

Q. That was not directed directly to the union as an organization, was it?

A. I don't know whether the corresponding secretary received one of those or not.

Q. The paper itself is not addressed to the union, is it?

A. No, it is addressed to all employes.

Mr. Jaburek: I move that the testimony regarding this instrument be stricken.

200 Trial Examiner Lyons: Well, I will strike out the part which says it is addressed to the union, because obviously it is not addressed to the union.

Mr. Nicoson: We have no objection to that, the exhibit will speak for itself.

Trial Examiner Lyons: Yes.

Mr. Nicoson: I will offer PETITIONER'S EXHIBIT 7 in evidence.

Presiding Officer Lyons: Is there any objection?

Mr. Jaburek: No objection.

Trial Examiner Lyons: It will be received.

(The letter previously marked PETITIONER'S EXHIBIT NO. 7 for identification, was received in evidence, witness Heuer.)

Q. (By Mr. Nicoson) After this communication marked petitioner's exhibit 7 was given to the employes did you have any further meetings with the management?

A. Yes.

Q. When was that?

A. We met them around November 23rd.

Q. Did you have a meeting before then?

A. No. We had the communication before that.

Q. I will ask you if you did not have a meeting on or about the 15th of October, with the management?

A. There was something about that date relative to the modification of the contract. I know we sent them a notice 201 but I don't remember whether we had a meeting or not. At least I never made a notation of it.

Q. I believe you testified that on September 21st, 1934, you had some discussion concerning the check-off system?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And that the check-off system was not disposed of at that meeting.

A. Well—

Q. Wasn't that your testimony?

A. Yes.

Q. Did you have any further meeting concerning the check-off system with the company?

A. There was a meeting later on, I don't just exactly remember the date, relative to a double check-off system.

Q. Do you know just about when that was?

A. Not unless it was about the middle of October. That is about the only way I could say, the way I have this down it must have been somewhere near the middle of October.

Q. Then, you did have a discussion?

A. Yes, sir.

Q. A further discussion concerning the check-off system?

A. Yes, sir.

Q. And to your best recollection it was the middle of 202 October?

A. Yes, sir.

Q. Do you recall who was present at that meeting?

A. I believe it was Mr. Grabbe, Mr. Gorby, Jr., Mr. Kelsey.

Q. Who is Mr. Gorby, Jr.?

A. He was at that time the plant superintendent, I suppose.

Q. Well, don't you know?

A. I am not just for sure, I believe he was superintendent.

Q. Was anyone else present—

Trial Examiner Lyons: It ought not to be a matter of much dispute, I suppose, you can establish that.

Mr. Jaburek: He was the superintendent at that time.
Trial Examiner Lyons: All right.

Q. (By Mr. Nicoson) Who represented the union at that meeting?

A. Practically the same members whose names I mentioned a while ago.

Q. Were you present at that time?

A. Yes, sir.

Q. What was the discussion, if anything?

A. Well, the union had received these letters about the legality of the check-off system. At the same time their wages were being checked, for an insurance policy that had been instituted in the plant for ten years past, and we tried to get our check-off system on the same basis as that, or at least make them equal.

203 Q. I believe you testified that the reason the management did not consent to your check-off proposal was because it was unlawful, is that right?

A. Yes, sir.

Q. Did the management inform you at that time what steps would have to be taken by the union in order to arrive at a check-off system?

A. Yes, sir.

Q. To comply with the law?

A. Yes, sir.

Q. State what those were?

A. They said we would have to have a pay authorization deduction slip twice monthly.

Q. In order to get your check-off?

A. In order to receive it, and also pay the costs.

Q. Had you signed any pay authorization slip for—authorization deduction for the insurance?

A. We had not.

Q. You had never been asked to?

A. No, sir.

Q. That question was not raised as to whether or not that deduction was lawful?

A. No, sir.

Q. But they were making those deductions at that time?

A. Yes, sir.

204 Mr. Nicoson: Mark this petitioner's exhibit 8 for identification.

(The paper referred to was marked Petitioner's Exhibit 8 for identification.)

Q. (By Mr. Nicoson) I hand you a paper marked petitioner's exhibit 8 for identification and ask you to examine it.

(The paper was passed to the witness.)

Q. State if you know in a general way what that is.

A. That is the union notice to the company for modification of our Regional Labor Board agreement.

Mr. Jaburek: I do not think this is sufficient. It is unsigned, it is a copy, no attempt made to prove the original, anything of the sort.

Trial Examiner Lyons: I do not understand that it has been offered yet. The witness has simply been asked if he knows what it is.

Mr. Nicoson: Do you object to the introduction?

Mr. Jaburek: Yes, at this time.

Q. (By Mr. Nicoson) I will ask you, Mr. Heuer if that paper was put in the mail?

A. It was. Not this one, but one just like it.

Q. To whom was it addressed?

A. The Columbian Enameling and Stamping Company.

Q. Did it have sufficient postage on it to carry it to its destination?

205 A. It did.

Q. Was that instrument written by the officers of the organization?

A. By the corresponding secretary and drawn up with the help of the balance of the committee.

Mr. Nicoson: I now offer in evidence PETITIONER'S EXHIBIT NO. 8.

Trial Examiner Lyons: Of course, this is a very bare document, Mr. Nicoson, there aren't even copies of signatures on it. There is nothing that indicates it ever was signed by anybody.

Perhaps if you try to get the original, you might be in a better position. We might get it, or if we did not we might get further testimony, but this is very, very bare. Perhaps counsel would produce the original if they have it.

Q. (By Mr. Nicoson) When was your next meeting with the management?

A. November 23, 1934.

Q. And what was discussed at that meeting?

A. The modification of the contract to which we had sent the letter.

Mr. Jaburek: Mr. Examiner, may I ask the witness a question or two about that book of his to which he seemed to be referring?

Trial Examiner Lyons: Yes, you may cross-examine him as to the nature of the thing from which he is refreshing his recollection.

Q. (By Mr. Jaburek) What is that book, Mr. Heuer, that you have in your hand?

A. That is my memorandum that I kept the dates. Being chairman of the committee, I kept the dates which we met, and after we met I entered what was negotiated about so I would have reference to go to the American Federation of Labor, or to the balance of the committee, or to the union.

Q. How soon after you met did you make the notes in your book?

A. Well, I tried to make them as soon as possible, but I wasn't always accurate, being a new officer I was rather careless.

Q. You were careless and inaccurate in making the records?

A. I don't mean that, I mean I didn't make them the next minute after I would leave.

Q. May I see that book?

A. Yes, sir.

(The book was passed to Mr. Jaburek.)

The Witness: Over here, I kept all of the expenses of the organization (indicating).

Q. (By Mr. Jaburek) And after you look at these notes in here, do you testify of your own independent memory, or do you testify from the books?

207 A. The dates is all I get out of the books.

Q. And then you testify of your own independent memory, is that it?

A. Yes, sir.

Mr. Jaburek: All right.

Mr. Nicoson: Mark this petitioner's exhibit 9 for identification, please.

(The paper referred to was marked petitioner's exhibit No. 9 for identification.)

Q. (By Mr. Nicoson) I show you a paper marked petitioner's exhibit 9 for identification, and ask you to examine it.

(The exhibit was passed to the witness.)

Q. You may state, if you know, what that is.

Trial Examiner Lyons: Now, we seem to get into difficulties at times when we ask witnesses to characterize a document, because perhaps they are not skilled in such descriptions.

Unless you want to ask the witness some further questions about it, I suppose the thing to do is to show it to counsel and offer it in evidence and we will pass on whether it is admissible or not.

Mr. Jaburek: That may go into evidence, if the Examiner please.

Trial Examiner Lyons: I do not mean to cut you off from anything, Mr. Nicoson.

208 Mr. Nicoson: That is all right.

Trial Examiner Lyons: You do not gain much by asking him if he knows what it is.

The exhibit will be received in evidence.

(The paper previously marked PETITIONER'S EXHIBIT 9 for identification, was received in evidence, Witness Heuer.)

Q. (By Mr. Nicoson) Now, this exhibit states that the officials will be glad to meet with you on November 23, 1934, for the purpose of discussing your request to modify the July 14 agreement; was that meeting held?

A. Yes, sir.

Q. Was there a meeting held as the result of that letter?

A. Yes, sir.

Q. On what date?

A. On November 23, 1934.

Q. Who was present at that meeting?

A. Mr. Grabbe, Mr. Gorby, Jr., Mr. Kelsey, and I believe later Mr. Gorby, Sr.

Q. What was discussed at that meeting?

Trial Examiner Lyons: And who was there on behalf of the union, the usual committee?

Mr. Nicoson: Pardon me, I am sorry.

The Witness: The usual committee.

Q. (By Trial Examiner Lyons) Was that committee still in office, there had been no other committee elected to take 209 its place?

A. No other committee elected to take its place.

Trial Examiner Lyons: All right.

Q. (By Mr. Nicoson) And what was discussed at that meeting?

A. We discussed an increase for the union employes, and

time and a half all over eight hours in any one day. And I believe there was something relative to forty hours in a week.

Q. Was that proposal made by the management, or by the union?

A. Made by the union.

Q. Was the proposal granted?

A. No, it was not.

Q. Was the question at that time of the increase in wages, and the question of overtime hours, disposed of?

A. I believe it was on Mr. Gorby's promise he would try to keep the hours below eight, eight, or below.

Q. As to the request of the employes for an increase in wages, was that allowed?

A. It was not. He inferred he was paying all he could possibly pay at the time.

Trial Examiner Lyons: May I ask a question?

Mr. Nicoson: Yes.

Q. (By Trial Examiner Lyons) When you say the question about the overtime was disposed of, do you mean to say 210 after Mr. Gorby said he would try to keep the hours down to eight, that the committee then withdrew—

A. Yes, that was the biggest bone of contention, some of them were working overtime.

Q. Then, you withdrew that subject from discussion, you or the members of the union, when he made that promise, is that so?

A. Yes, as near as I can say.

Trial Examiner Lyons: All right.

Q. (By Mr. Nicoson) Were the hours kept down to eight, or therabout?

Mr. Jaburek: May I suggest we are at this meeting now?

Trial Examiner Lyons: Yes. Unless you have finished with the meeting it might be better if you disposed of the meeting. However, I will not interfere with your order, if you think it is more effective to do it the way you are doing.

Mr. Nicoson: I just wonder if counsel is directing the questions, or am I?

Trial Examiner Lyons: Perhaps counsel—

Mr. Nicoson: Perhaps counsel does not know where we are, whether at that meeting, or some place else.

Mr. Jaburek: Well, you tell us.

Trial Examiner Lyons: I think that counsel addressed me. He will, of course.

211 Mr. Nicoson: He should.

Q. By Mr. Nicoson) When did you have your next meeting with the company?

A. The exact date, I don't know, but somewhere near the first part of January.

Q. And who was present at that meeting?

A. I believe Mr. Grabbe, Mr. Gorby, Jr., and Mr. Kelsey, as near as I remember.

Q. Who represented the union?

A. The same committee.

Q. Was there anything discussed at that meeting?

A. Yes.

Q. What was it?

A. It was relative to our proposal we proposed to the company.

Q. You had proposed what to the company?

A. We had drawed up a cooperative proposal.

Mr. Nicoson: Now, I think I want petitioner's exhibit No. 1. (The exhibit referred to was passed to Mr. Nicoson.)

Q. (By Mr. Nicoson) I will ask you to examine petitioner's exhibit No. 1, and note under the captions proposals, and say whether or not those are the proposals that you presented to the company about the first of January, 1935?

(The exhibit was passed to the witness.)

212 A. Yes, sir.

Q. As a result of that meeting, were the proposals accepted or denied by the company at that time?

A. Mr. Grabbe told us that he would take it under advisement, or some words to that effect, and let us know in a few days.

Q. Did you receive any advice from the management on your proposals as a result of this meeting?

A. Yes, later on, in January, around the 20th, something like that.

Q. Was that a meeting, or was there a meeting on that date?

A. Yes.

Q. And what transpired at that meeting?

A. An oral reading of that proposal by William Gorby, Jr., to the entire committee.

Q. Was there any other members present of the management at that meeting?

A. Not as I remember of; no, sir.

Q. Were you furnished with a copy of the company's answer at that time?

A. I was refused one.

Q. You requested one?

A. I did.

Q. They refused to give you one?

A. Yes, sir.

Q. Did you ever receive an answer as to your proposals directly to the union from the management?

A. I am not aware whether Lois Conder got one or not, but every one did the next day. Yes, she did too. Everyone got one through the mail the next day.

Q. I will show you petitioner's exhibit 1 again, and ask you if that is what you are referring to?

A. That is it.

Q. Is that the only answer you got from the management on your proposals, that you presented?

Trial Examiner Lyons: Now, does the witness understand whether he is asked about "you" meaning the union, or "you" meaning some person?

Mr. Nicoson: I mean the union when I say "you".

Trial Examiner Lyons: I know you do, but I want to be sure the witness will know.

Mr. Nicoson: Strike that and I will ask the question over.

Q. (By Mr. Nicoson) Did the union as far as you know ever receive any other answer other than this circular poster as the result of your proposals to the management?

A. The corresponding secretary received one.

Q. One of those?

A. Well, not just exactly like it, drawed up practically the same on a little different paper.

Q. Were those circulars posted on the boards about 214 the factory, the bulletin boards?

A. I am not sure but I believe there was one at the front and one at the east entrances.

Q. Were those answers contained in that circular acceptable to the union?

Mr. Jaburek: That is objected to, it calls for a conclusion of the witness.

Mr. Nicoson: Well, he is an executive officer, and he should know what the union did about it, if anything.

Trial Examiner Lyons: Well, you have just struck the point I was going to use, you could ask him what the union did about it. That would indicate how they felt about it better than his judgment of how they felt about it.

We want to get the best evidence we can. If there was any-

thing done, or said by the union which shows whether this was acceptable or not, that would be better than a general statement. You probably would have proceeded to that anyway, so why not go right at it?

Q. (By Mr. Nicoson) Did the union take any action as the result of this circular?

A. I don't remember, but I know it wasn't dropped at that time, it was discussed later on in another meeting.

Q. When was your next meeting?

A. I believe February 7th.

Q. Who was present at that meeting?

215 Trial Examiner Lyons: Are we now referring to a meeting between the committee and the company, or a meeting of the union?

Mr. Nicoson: Yes. We are referring to a meeting now between the management and the scale committee.

Trial Examiner Lyons: All right.

The Witness: What was the question you asked me again?

Q. (By Mr. Nicoson) Who was present at this meeting of February 7th that you spoke of?

A. Mr. Grabbe, Mr. Gorby, Jr., and Mr. Kelsey, I believe.

Q. Was the union represented?

A. Yes, sir.

Q. Who represented the union?

A. I am not quite sure, but I believe the same committee.

Q. What was discussed at that meeting?

A. Well, Mr. Grabbe told us that our proposal was not a subject for arbitration. We had tried to arbitrate the matter, and he told us it was not a subject of arbitration.

Q. Had you requested the company to arbitrate?

A. Yes, we had sent a letter just prior to that meeting, I believe.

Q. Was there anything else discussed at this meeting of February 7th?

A. I think not.

216 Mr. Nicoson: Mark this petitioner's exhibit 10 for identification, please.

(The paper referred to was marked petitioner's exhibit 10 for identification.)

Q. (By Mr. Nicoson) I hand you a paper marked petitioner's exhibit 10 for identification, and ask you to examine it.

(The exhibit was passed to the witness.)

Q. Do you know what it is?

A. Yes, sir.

Mr. Jaburek: We have no objection to this being received in evidence.

Mr. Nicoson: I now offer PETITIONER'S EXHIBIT NO. 10 in evidence.

Trial Examiner Lyons: This letter appears to refer to another sheet that was attached, or accompanied it.

Mr. Nicoson: I intend to introduce that also.

Trial Examiner Lyons: If it is not already in.

Mr. Nicoson: It will be introduced.

Trial Examiner Lyons: Has that been marked?

Mr. Nicoson: No.

Trial Examiner Lyons: Exhibit 10 will be received in evidence.

(The document previously marked PETITIONER'S EXHIBIT 10 for identification was received in evidence, Witness Heuer.)

Mr. Nicoson: Mark this petitioner's exhibit 11 for identification.

217 (The paper referred to was marked petitioner's exhibit 11 for identification.)

Q. (By Mr. Nicoson) I hand you petitioner's exhibit 11 for identification, and ask you to examine it.

(The exhibit was passed to the witness.)

Q. Do you know what it is?

A. Yes, sir.

(The exhibit was passed to Mr. Jaburek.)

Mr. Nicoson: I now offer PETITIONER'S EXHIBIT 11 in evidence.

Mr. Jaburek: No objection.

Trial Examiner Lyons: This, I take it, is the memorandum which was referred to in petitioner exhibit No. 10?

Mr. Nicoson: That is right.

Trial Examiner Lyons: Accompanied it?

Mr. Nicoson: Yes, sir.

Trial Examiner Lyons: Exhibit 11 will be received.

(The paper previously marked PETITIONER'S EXHIBIT 11 for identification was received in evidence, witness Heuer.)

Mr. Nicoson: Mark this petitioner's exhibit 12 for identification.

(The paper referred to was marked petitioner's exhibit 12 for identification.)

Q. (By Mr. Nicoson) I now hand you petitioner's exhibit 12 for identification and ask you to examine it.

218 (The exhibit was passed to the witness.)

Q. Do you know what that is?

A. Yes, sir.

(The exhibit was passed to Mr. Jaburek.)

Mr. Nicoson: I now offer in evidence PETITIONER'S EXHIBIT NO. 12.

Trial Examiner Lyons: Is there any objection?

Mr. Jaburek: No, Mr. Examiner.

Trial Examiner Lyons: It will be received in evidence and marked petitioner's exhibit No. 12.

(The paper previously marked PETITIONER'S EXHIBIT NO. 12 for identification, was received in evidence, Witness Heuer.)

Q. (By Mr. Nicoson) Now, this petitioner's exhibit No. 12 was received by your organization, was it?

A. Yes, sir.

Mr. Nicoson: Mark this petitioner's exhibit 13 for identification.

(The paper referred to was marked petitioner's exhibit 13 for identification.)

Q. (By Mr. Nicoson) I hand you petitioner's exhibit 13, and ask you to examine it.

(The exhibit was passed to the witness.)

Q. Have you seen it before?

A. Yes, sir.

219 Q. Do you know what it is?

A. Yes, sir.

(The exhibit was passed to Mr. Jaburek.)

Mr. Nicoson: I now offer in evidence petitioner's exhibit 13.

Trial Examiner Lyons: Exhibit 13 will be received in evidence.

(The document previously marked PETITIONER'S EXHIBIT 13 for identification, was received in evidence, Witness Heuer.)

Q. (By Mr. Nicoson) Was this exhibit given to the employees of the factor, or do you know?

A. Yes, sir.

Q. Was it also furnished to the union?

A. Yes, sir.

Q. Now, as a result of that letter of the company to the

union on February 19, 1935, was there a meeting held after the receipt of that letter?

A. After the 19th?

Q. After February 19, 1935?

A. I don't have a notation of any more in February. One in March, March 12.

Q. Was that the next meeting?

A. Yes, sir.

Q. What date was that meeting held?

A. March 12th.

220 Q. Who was present at that meeting?

Mr. Jaburek: Well, Mr. Nicoson, are you talking now about the meeting of the union or meeting of somebody from the company?

Mr. Nicoson: I am asking him now who was present and if he will tell you, and if it is not proper, you may have it stricken out.

The Witness: A. Mr. Grabbe, Mr. Gorby, Mr. Gorby, Jr. and I think Mr. Kelsey was there.

Q. (By Mr. Nicoson) Was the union represented?

A. The union was represented with a committee and Mr. Taylor.

Q. And this committee is the same as you testified to, the same personnel as you testified to previously?

A. Yes, sir; as near as I can remember.

Q. And what was discussed at that meeting?

A. Well, we went over the whole proposal, the union's proposal to the company, and went over it point by point, and Mr. Taylor did most of the talking for the union, although some of the rest of us talked. Nothing came of it.

Q. What was said?

A. Oh, they took each point of the proposal and picked it to pieces. Both the company and Mr. Taylor, and tried to negotiate some part out of each portion of it.

Q. And discussed the entire proposal?

221 A. Yes, sir; from start to finish.

Trial Examiner Lyons: For the record, is that proposal embodied in any exhibit?

Mr. Nicoson: Yes, that is petitioner's exhibit No. 1.

Trial Examiner Lyons: All right.

Q. (By Mr. Nicoson) Was any reference made to the letter received by you from the company under date of February 19, 1935, which is petitioner's exhibit No. 12?

A. Yes, I believe this letter was discussed. The union

took the attitude that the company was dealing individually with its employes, instead of collectively bargaining, and we talked that over, tried to get it ironed out in such way that we could keep the union's business within itself and not deal directly.

Q. Was it ironed out?

A. Well, Mr. Grabbe told us that he would consult us before sending out any more circulars, but he didn't say he would not send any more.

Q. That was on March 12th?

A. As near as I can remember. That is the next date I have here of a meeting.

Q. And on March 17th, you sent petitioner's exhibit No. 2, is that right?

(The exhibit was passed to the witness.)

A. Yes, sir.

222 Trial Examiner Lyons: May I see that, please?

Mr. Nicoson: Certainly.

(The exhibit was passed to the Trial Examiner.)

Q. (By Mr. Nicoson) Did your organization have any more meetings with the management prior to March 23, 1935?

A. No, that was the last.

Q. What happened on March 23, 1935?

A. In accordance with that resolution the plant ceased operations, all except the office and power house.

Mr. Jaburek: I move the first part of that be stricken, "in accordance with that resolution."

Trial Examiner Lyons: I think that may go out. What happened is the only important part.

Mr. Nicoson: Will you reread the question and the answer?

(The question and answer were read as above recorded.)

Mr. Nicoson: We are striking out "in accordance with that resolution."

Q. (By Mr. Nicoson) Did your organization have anything to do with the suspension of operations on that date?

Mr. Jaburek: That is objected to because it calls for a conclusion of the witness. The witness should state what the union did, if it did anything.

Trial Examiner Lyons: May I hear the question?

223 (The question was read as above recorded.)

Trial Examiner Lyons: I think that question is pretty broad, Mr. Nicoson, I think you ought to reframe it.

Q. (By Mr. Nicoson) Well, what did the union do on that date, if anything, in connection with the Columbian Enameling and Stamping Company?

- A. On March 23?
Q. On March 23?
A. It ceased operations.
Q. The union ceased, or the employes ceased?
A. The employes ceased.
Q. What did the union do?
A. The union immediately began making arrangements that night to picket the plant.

Q. Was the plan picketed?
A. It was.
Q. Directly after the strike, did you have any meetings with the management concerning the purpose of the strike?

- A. No, sir.
Q. When was the next communication you had with the management?
A. Well, we got in a round about way, Robert Mythen—
Q. Who is Robert Mythen?
A. Conciliator for the department of labor, he came in here on April 24.
224 Q. What was Mr. Mythen's mission, if anything?
A. His mission—

Mr. Jaburek: Objected to, calling for a conclusion of the witness.

Trial Examiner Lyons: Well, if you mean by that a mission from anybody else, I will exclude it. If you propose to show he was given a mission by the union—

Mr. Nicoson: Strike it out, I will withdraw it.
Q. (By Mr. Nicoson) What did Mr. Mythen do, if anything?

A. He contacted the committee at various times, and the committee instructed him if at all possible to bring about—

Mr. Jaburek: That is objected to, what the committee instructed him out of the presence of the respondent company.
Trial Examiner Lyons: Unless it is proposed to show those instructions were communicated by him to the respondent.

Mr. Nicoson: That is the intention, if we can get that far.
Trial Examiner Lyons: I beg your pardon, I did not hear.
Mr. Nicoson: That was our intention, if counsel will permit us to get through with our question.

Trial Examiner Lyons: Well, if you intend to show that it was communicated to the respondent, I will admit it.

Mr. Nicoson: Will you read the question and answer, please.

(The question and answer referred to were read by 225 the reporter as follows:

"Q. What did Mr. Mythen do, if anything?

"A. He contacted the committee at various times, and the committee instructed him if at all possible to bring about—")

The Witness: A. (Continuing) —a settlement of this dispute. He in turn told us that he would try to contact the company. Later told us that he did, but he thought it would be useless.

Q. (By Mr. Nicoson) That what would be useless?

A. To try to settle it.

Q. What next happened, and when?

A. The mayor of this city sent the union a letter asking us to meet with the management—

Mr. Jaburek: Objected to. The letter is the best evidence. The witness is stating his conclusion, and, of course, it is hearsay.

Trial Examiner Lyons: If the letter of the mayor is at all obtainable, it is the best evidence.

Q. (By Mr. Nicoson.) Do you have that letter?

A. I don't know whether that is in our files at the desk, or not. I believe Mr. Cox has it at home.

Q. Did you have a meeting with the mayor about that time?

A. His letter of the 7th asking for a meeting on the 10th, and the committee—

226 Mr. Jaburek: Now, if the Examiner please, we object to this testimony—

Mr. Nicoson: That is right.

Mr. Jaburek: (Continuing) —as not being responsive to the question.

Trial Examiner Lyons: That answer may be stricken out.

Mr. Nicoson: Stricken out.

Q. (By Mr. Nicoson) Around about May 7th did you have a meeting with the mayor?

A. We met the mayor on the 10th.

Q. What transpired at that meeting and who was present?

Mr. Jaburek: Objected to as incompetent and irrelevant, no showing that the respondent company was at the meeting, or had anything to do with it.

Trial Examiner Lyons: Well, he just asked him—he may ask him who was present.

Mr. Nicoson: Yes.

Trial Examiner Lyons: If the answer shows respondent's officers were present, that is a different question.

Mr. Nicoson: I will reframe the question.

Q. (By Mr. Nicoson) Who were present at that meeting?

A. The mayor and the committee.

Q. Was a member of the management there?

A. No.

Q. Did the mayor inform you at that time whether or
227 not an invitation had been issued to the management?

Mr. Jaburek: Objected to, what was said outside of
the presence of the respondent company.

Trial Examiner Lyons: That objection is sustained unless
you want to show that the mayor communicated anything to
the company, unless you say you will show it.

Mr. Nicoson: Mark this petitioner's exhibit No. 14 for
identification.

(The paper referred to was marked petitioner's exhibit 14
for identification.)

Q. (By Mr. Nicoson) I ask you to examine petitioner's
exhibit No. 14.

(The exhibit was passed to the witness.)

Q. (By Mr. Nicoson) Do you know what it is?

A. I do.

Q. Do you know where it came from?

A. Yes, sir.

Q. Where did it come from?

A. Mayor Beecher's office.

Q. Was Mayor Beecher present at the time it came from
Mayor Beecher's office?

A. He handed it to me.

Q. He gave it to you?

A. He did.

(The exhibit was passed to Mr. Jaburek.)

228 Mr. Jaburek: We have no objection to the introduc-
tion of this letter into evidence.

Mr. Nicoson: I now introduce PETITIONER'S EX-
HIBIT NO. 14 in evidence.

Trial Examiner Lyons: We are going pretty far outside
the scope, it seems to me. If it is not objected to, and is of-
fered, I will admit it. We ought to try to avoid all reference
to dealings of public authorities in which both parties did not
take part.

Mr. Nicoson: If the Examiner please, I think the question

of whether or not the company has negotiated, or attempted to negotiate questions with this organization, that there has been some interest shown by the public in attempted negotiations, all of which were refused by the management.

Trial Examiner Lyons: I agree with you on that, it is all important.

Mr. Nicoson: Those things are all important.

Trial Examiner Lyons: We cannot put in everything.

Mr. Nicoson: I do not try to.

Trial Examiner Lyons: Exhibit 14 will be received.

(The paper previously marked PETITIONER'S EXHIBIT 14 for identification was received in evidence, Witness Heuer.)

Q. (By Mr. Nicoson) On or about June 7th, did you request a meeting with the management concerning the strike situation at the mill?

229 A. We did.

Q. I will hand you petitioner's exhibit No. 4, and ask you if that is the request, if you know?

(The exhibit was passed to the witness.)

A. That is it.

Q. Was there a meeting held as the result of that request, Mr. Heuer?

A. There was on the 11th of June.

Q. 1935?

A. Yes, sir.

Q. Where was this meeting held?

A. The Deming Hotel.

Q. And who were present?

A. Mr. Gorby, Sr., Mr. Gorby, Jr., Mr. Grabbe, L. G. Brown, Otis Cox, and myself.

Q. And what was discussed at that meeting?

A. Well, we talked over trying to settle the strike situation, but the company informed us—that is, the officials of the company, informed us—

Q. Who are the officials?

A. Gorby, Gorby and Grabbe.

Q. Well, did they all speak at once?

A. No.

Q. Who made the statement?

A. Well, Mr. Gorby told us—Senior,—that we could 230 all come back to our respective positions at the same pay.

There would be no union tolerated within the plant, and said that they would open the plant by force.

Q. Was there anything further said at that meeting?

A. Yes.

Q. What was said?

A. Wanted to know if they could induce the committee to burn the stamping mill down so they could collect the insurance.

Q. Who wanted to know that?

A. Mr. Gorby. I think Mr. Grabbe started the question and Mr. Gorby finished it up.

Q. Was there any further meeting held with the management relative to this strike situation prior to July 22, 1935?

Mr. Jaburek: Well, we object to the form of the question because it assumes there was a meeting held on July 22.

Trial Examiner Lyons: Now, I will have to have the question read.

(The question was read as above recorded.)

Trial Examiner Lyons: I think the question does not assume anything, just asks him whether there were any prior to July, 1935.

Mr. Jaborek: Well, I construe it to mean that the witness is led to believe, or is supposed to believe that there was a meeting held on July 22.

231 Mr. Nicoson: Counsel's construction is wrong because there is no intention of that at all.

Trial Examiner Lyons: No, I do not think any such assumption follows. The only thing it refers to is a specific date, was there a meeting relative to the strike prior to July 22?

Mr. Jaburek: Well, I will withdraw my objection.

The Witness: A. No, there wasn't that I remember.

Q. (By Mr. Nicoson): Was there anything happened on July 19, relative to the stamping mill situation, that you know of?

A. Yes. In the early part of—the 19th, the union received a telegram from Chicago that the National Metal Trade Association—

Mr. Jaburek: Objection.

Trial Examiner Lyons: Any communication between the union and some other person, or organization is unimportant unless brought to the attention of the respondent.

Mr. Jaburek: I move that the answer be stricken as far as he got.

Trial Examiner Lyons: Unless you propose to show that was brought to the attention of the respondent in some way, I will strike out that answer.

Mr. Nicoson: You can strike it out because his answer is not responsive anyhow.

232 Trial Examiner Lyons: That answer may be stricken out.

Q. (By Mr. Nicoson) Directing your attention to the morning of July 19, 1935, did anything happen in connection with the strike at the stamping mill, or the stamping mill property?

A. Yes, sir. Armed guards were entered into the plant in trucks, escorted by police cars.

Q. Do you know how many police cars were present at that time?

A. I don't know, I saw three that I remember.

Mr. Jaburek: Mr. Trial Examiner, I want to object to this line of testimony. We permitted it yesterday, but I cannot see its relevancy, and this is merely cumulative of an immaterial issue.

We are charged here with violating the Act. The fact that some guards might have been hauled in, or were not hauled in does not prove the issue in any shape, manner, or form. And it is merely used to bring into this picture something which evidently the petitioner feels may inflame some one against the respondent company.

Trial Examiner Lyons: Well, the evidence went in yesterday with regard to police cars, without objection, and for that reason was not excluded. I do not care to hear any more details about the police cars, because I assume police activities are the result of public authority, the propriety of 233 which I am not qualified to pass on.

The statement about armed guards may remain in. I do not think we ought to go much further with it. It was testified to by the other witness and unless it is seriously disputed I do not think you need any corroboration.

Q. (By Mr. Nicoson) Did anything happen in the city of Terre Haute on July 22 in connection with the stamping mills disturbance?

Mr. Jaburek: Now, Mr. Examiner, we object to that question because of the fact that the question is too general. It does not connect it up with the company in any way, and that is the thing we are interested in upon this inquiry.

Trial Examiner Lyons: Perhaps if counsel would, off the record, make a statement to me as to what answer he expects, I may be able to pass on this.

(There was a discussion off the record.)

Trial Examiner Lyons: Now, what is the question?
(The question referred to was read by the reporter as follows:

"Q. Did anything happen in the city of Terre Haute on July 22 in connection with the stamping mills disturbance?"

Trial Examiner Lyons: The question is excluded.

Q. (By Mr. Nicoson) Were you contacted around about the 23rd of that month by a man by the name of Richardson?

234 A. Two men, one by the name of Richardson, the other by the name of Sheck.

Q. Do you know who they were?

A. Commissioners of conciliation of the department of labor.

Q. Is the department of labor part of the United States government, or do you know?

A. As near as I know.

Q. What was said between you and Mr. Richardson and Mr. Sheck concerning the Stamping Mills trouble?

Mr. Jaburek: Just a moment. That is objected to as incompetent, irrelevant and immaterial, what they might have said between them outside of the presence of the respondent.

Trial Examiner Lyons: Well, I make the same ruling as I did yesterday. If counsel proposes to show that these men received instructions from the union, which by them were communicated to the company, I will admit what the instructions were, subject to being excluded if the connection is not made.

Mr. Nicoson: Will you read the question, please.

(The question was read as above recorded.)

The Witness: A. He said he had a promise from the management, that is, Mr. Gorby, that he would negotiate, and he asked that—

235 Q. (By Mr. Nicoson) Negotiated with whom?

A. With the union, or through him to the union, either way. He didn't make that clear exactly.

Q. Did the company negotiate?

A. No. Mr. Gorby later changed his mind.

Mr. Jaburek: That is objected to.

Trial Examiner Lyons: That may be stricken.

Mr. Nicoson: Strike it out.

Q. (By Mr. Nicoson) Did Mr. Sheck, or Mr. Richardson make any further report to you—strike that out.

Had you made any request on Richardson and Sheck to attempt to arrange a meeting between—

Mr. Jaburek: I object to that as leading the witness.

Trial Examiner Lyons: Well, it is, I suppose, but the witness obviously went ahead of his story, and I do not think a direct question at that stage hurts you very much.

Mr. Jaburek: And this, of course, is also subject to the same objection that we made.

Trial Examiner Lyons: Oh, yes; subject to the ruling that it must be shown to be communicated.

Mr. Nicoson: Now, will you read me the question? Read the question as far as I had gone.

(The question referred to was read by the reporter as follows:

"Q. Had you made any request on Richardson and 236 Sheck to attempt to arrange a meeting between—")

Q. (By Mr. Nicoson; Continuing) —your organization and the management of the Columbian Enameling and Stamping Company?

A. We had.

Q. Did Mr. Richardson and Mr. Sheck advise you as to the results of any attempt they made at those negotiations?

A. Yes.

Q. What did they say?

A. They first asked us if we would not sign a statement to try to settle the general strike, and then he later told us that Mr. Gorby had changed his mind.

Q. No meeting was held?

A. None.

Q. Did you attempt any further meetings with the management in regard to this strike?

Trial Examiner Lyons: Has the date of this talk with Richardson and Sheck appeared?

Mr. Nicoson: Yes.

Trial Examiner Lyons: And as the evidence stands now it looks as though there were two talks. Were they on the same day or different days? The day you told Richardson to see the management and he told you what they said, was that on different days?

The Witness: We met him two times one day, and either two or three another, I don't remember just exactly.

237 Q. (By Trial Examiner Lyons) And what dates were those if you can recall?

A. The 23rd and 24th I believe.

Trial Examiner Lyons: All right, proceed, Mr. Nicoson.
Mr. Nicoson: Will you read my last question please.

(The question referred to was read by the reporter as follows:

"Q. Did you attempt any further meetings with the management in regard to this strike?"

The Witness: Well, yes, we sent a letter to the company on September 20.

Q. (By Mr. Nicsson) Is this the letter?

(The letter in question was passed to the witness.)

A. That is it, a copy of it.

Q. Did you make any further efforts to have a meeting with the management, between your organization and the management of the company?

A. Yes, there was another one in October, the 11th.

Q. Is this a copy of the letter?

(The letter in question was passed to the witness.)

A. That is it.

Q. Now, were there any further efforts upon the part of your organization to meet with the management on this situation?

A. Yes. We prevailed upon a man by the name of Max Schafer to contact the company.

238 Q. You requested Mr. Schafer?

A. Yes, we had at various times long before he did.

Mr. Jaburek: That line of evidence is objected to. It is incompetent for the same reason, it is outside of the presence of the respondent company.

Trial Examiner Lyons: It will be admitted subject to being shown to be communicated.

Mr. Nicoson: If the Examiner please, I propose to put Mr. Schafer on the stand to make his own direct testimony, and I will not question this witness any further as to this transaction.

Trial Examiner Lyons: All right.

Mr. Jaburek: May we have his answer stricken on the ground that this testimony is incompetent.

Trial Examiner Lyons: Let us hear what it was.

(The testimony referred to was read by the reporter as follows:

"Q. Now, were there any further efforts upon the part of your organization to meet with the management on this situation?"

"A. Yes, we prevailed on a man by the name of Max Schafer to contact the company.

"Q. You requested Mr. Schafer?

"A. Yes, we had at various times long before he did."

239 Mr. Nicoson: Do you want all of the answer stricken?

Mr. Jaburek: The reference to Schafer.

Mr. Nicoson: I think we may have in the record, if the Examiner please, that the union had requested Mr. Schafer to make the contact and do what he could. That is, I believe that is the first question. I believe we are entitled to have that in the record. The rest of it is immaterial, and I agree with counsel that it may go out.

Mr. Jaburek: That is the substance of a conversation had outside of the hearing of the respondent company.

Trial Examiner Lyons: Now let us see what the answer was and see how much of it may remain in.

(The answer referred to was read by the reporter as above recorded.)

Trial Examiner Lyons: I think "we had at various times long before" ought to be stricken out. The fact they did request Schafer to contact the company, if supported by Mr. Schafer's testimony that he did contact the company, is admissible.

Mr. Jaburek: Possibly if there is a certain time alleged which brings it within the scope of this complaint. We are charged with violations on three separate dates.

Trial Examiner Lyons: Yes.

Mr. Jaburek: And those are the only dates this inquiry is concerned with.

240 Trial Examiner Lyons: As we discussed before, if there were attempts on other dates, what transpired and what the company did might color the company's conduct on other occasions. It might not tend to prove specific dates, but tend to prove the nature of what did transpire on those specific dates.

If you are going to put Mr. Schafer on I do not see why we cannot clear this record by striking out the entire answer.

Mr. Nicoson: The only thing I would like the record to show is that there was a request made on Mr. Schafer.

Trial Examiner Lyons: That may stay in subject to your showing by Mr. Schafer or some other way that it was communicated.

Mr. Jaburek: That there was talk with Mr. Schafer but

not what was said. That they prevailed on Mr. Schafer to do something, because that makes it part of the conversation. Yes, there was a talk with Mr. Schafer on such and such a date, that much may be competent.

Trial Examiner Lyons: Suppose we strike out the answer, Mr. Nicoson, and you put the question again, and see if the witness will make an answer which will be acceptable. The words "prevailed upon" are perhaps objectionable.

Q. (By Mr. Nicoson) Subsequent to October 11 did your organization make any further effort to contact the management of the stamping mill?

241 A. We—

Mr. Jaburek: Objected to as incompetent, irrelevant and immaterial. October 11th is the last date upon which we are charged with violating the Act. Anything that happened subsequent would not give color to what had happened before.

Mr. Nicoson: Well, I—

Mr. Jaburek: If we felt we had a reason on October 11th for doing something, the fact that after October 11th we take a certain course of action—

Trial Examiner Lyons: I think it might. We are discussing the attitude of the company and we are hearing this in December. A course of conduct has been shown by the evidence commencing some time in 1934. I think that acts occurring within a few months after October 11, 1935, might be found to be a part of your prior course of conduct.

Mr. Jaburek: Well, we have our objection in the record.

Trial Examiner Lyons: Yes, of course. The question may be answered yes or no.

The Witness: Will you read the question please?

(The question referred to was read by the reporter as follows:

"Q. Did your organization make any further efforts to contact the management of the stamping mill?"

The Witness: We did.

Trial Examiner Lyons: Now, might we get the date 242 of that by the next question.

Q. (By Mr. Nicoson) What date was that effort made, if you know, Mr. Heuer?

A. Well, there were two or three efforts, but one was made around the 20th I believe.

Q. (By Trial Examiner Lyons) The 20th of what, October?

A. Let's see just a moment. Yes, it was around the 12th, somewhere along that, of October. We talked to Max at various times.

Q. (By Mr. Nicoson) Was that in 1935?

A. Yes, sir.

Mr. Jaburek: The same objection to this last question.

Trial Examiner Lyons: In regard to the time I am inclined to admit it under the 6th paragraph of the complaint which alleges that not only on July 22, September 20 and October 11 did the respondent refuse to engage to bargain collectively, but that at all times thereafter the respondent did refuse and has refused to bargain collectively with the union.

Mr. Jaburek: Well, I think that under the rule of law when certain specific dates are cited, that that excludes any other date.

Trial Examiner Lyons: Not if the allegation continues to embrace other dates.

Mr. Jaburek: But it does not embrace any after 243 October 11th.

Trial Examiner Lyons: It says at all times thereafter. We are dealing now with an allegation of an unfair labor practice. The statute says that if an employer is engaged or has engaged in unfair labor practice, he may be prevented by the action of the National Labor Relations Board.

It seems to me that that broad wording of the statute makes the allegation in paragraph 6 "at all times thereafter" a proper allegation.

Mr. Jaburek: Well, the charges that we refused to bargain collectively on three specific dates and at all times thereafter. The fact that these specific dates are mentioned as I understand it, would exclude a charge on any other date.

Trial Examiner Lyons: I do not agree with you on that. In a criminal pleading which perhaps is the strictest of all it is very common to charge a continuing offense taking place on other dates. And on dates after the finding in the indictment. You have seen that form, and it has been held in many states to be a proper form.

I think it is applicable to this pleading which is not as strict.

Mr. Jaburek: But that is of course in the event of a continuing offense. I do not think there is anything in the Act which makes a refusal to bargain on one date a continuing offense so that it runs over to any other date and is a violation on the next day and the next day and the next day.

Trial Examiner Lyons: Well, the statute says in subdi-

vision 5 of Section 8 that it shall be an unfair labor practice for an employer to refuse to bargain collectively with employees.

Section 10, sub-section (b) says, whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice the Board will act in a certain manner prescribed by that section.

Now, it seems to me that that unquestionably gives the right to the complainant to charge a continuing offense up to the date of the complaint itself.

Mr. Jaburek: The engaging in of course I think refers to something which is of a continuing character as for instance if the employer coerces an employee, or if he discriminates against an employee over a period of time.

But here there is a specific charge against us that on a certain date we did this thing because we refused on that date to bargain collectively, and that makes the act complete.

Trial Examiner Lyons: You would not say, would you, that the employee is bound to go into the office of the company or some other way communicate with them on every day to determine whether they are still adhering to their position not to deal with them?

245 Mr. Jaburek: No, no.

Trial Examiner Lyons: It is fair to assume if they have not indicated otherwise that they are still of the same mind, assuming that they have refused, about which I do not pass at this time, but there is some evidence to the effect, at least there is a contention on the part of the complainant that on these specific dates they refused.

Now, if that is shown by the evidence, it is fair to say the company is still refusing, or was up to the time of the complaint, unless they have shown otherwise.

I do not think it is necessary for us to show that on every day there was a request to bargain, but if they can show that on other dates, there was a request to bargain and a continuing of their unfair labor practice.

Mr. Jaburek: I do not know whether I am explaining myself clearly on this point, but I—my thought is that the act is complete on that date when the offer is made and rejected, or within a reasonable time thereafter, and we might have made an answer. And the fact that certain dates are mentioned excludes evidence of any other dates.

Trial Examiner Lyons: Well, we seem to understand each other, and I am going to admit the evidence subject to your objection.

Mr. Jaburek: Subject to our objection?

Trial Examiner Lyons: Yes.

246 Q. (By Mr. Nicoson.) In the organization of your union, did your union permit all of the employees of the stamping mill to become members?

Mr. Jaburek: Oh, just a moment. I do not like the form of that question. "Does the union permit all employees to become members."

Mr. Nicoson: What is the matter with it?

Mr. Jaburek: I think the form of it is wrong. If there are any rules of eligibility, the rules of eligibility are the best evidence of what counsel is trying to find out here.

Trial Examiner Lyons: Well, if there are such rules in written form it would be the most informative way in which they could be presented to me.

Mr. Nicoson: I agree if there were any in existence, but I do not think there are.

Trial Examiner Lyons: Well, bring that out.

Mr. Nicoson: That is why I asked him the question.

Trial Examiner Lyons: Bring it out and then we will be able to pass on the rest of it.

Q. (By Mr. Nicoson.) Does the constitution and by-laws of your organization describe who may become members?

A. Yes. We cater to—

Mr. Jaburek: Now, I object to the last part of the question.

247 Trial Examiner Lyons: "Yes" is admitted. The rest may be stricken out.

Q. (By Mr. Nicoson.) Do you have a copy of the constitution and by-laws with you?

A. No, I do not.

Mr. Nicoson: I believe that is all.

Trial Examiner Lyons: Do you mean that is your last question?

Mr. Nicoson: Yes.

Trial Examiner Lyons: If there is anything in the nature of documentary evidence that either party hasn't available at the time it first becomes a question, it may of course be introduced later.

Mr. Jaburek: I am sorry, I did not hear you.

Trial Examiner Lyons: I say if there is anything in the nature of documentary evidence that either party desires to introduce which is not present at the time the question first

arises, I will be glad to admit it later. That refers to both parties.

Mr. Jaburek: I wonder if we could suspend for a little time.

Trial Examiner Lyons: We will take five minutes and reconvene at 5 minutes after 12.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

Trial Examiner Lyons: All right, Mr. Jaburek.

248 Mr. Jaburek: I have no cross-examination of this witness.

Examination by Trial Examiner Lyons.

Q. (By Trial Examiner Lyons.) Mr. Heuer, I would like to ask you just one or two questions about your union.

A. Yes, sir.

Q. The seal committee of which you have spoken, was that elected at the regular meeting of the union?

A. It was.

Q. And is there a record of that meeting, a written record of it available?

A. I believe there is, yes, sir.

Q. Is it here in the courtroom?

A. No, I think the corresponding secretary holds it.

Q. Could you get it and bring it here so I could see it this afternoon?

A. Yes, sir.

Q. Is that in a book containing records of other meetings?

A. Well, we used one book up and then I think that there is both books available. I am not sure, I haven't had charge of that office.

Q. You might bring those with you so if there is any other meeting I want to ask you about we will have them here. Will you do that?

A. Yes, sir.

249 Trial Examiner Lyons: That is all.

(Witness excused.)

Mr. Nicoson: Mr. James Whitecotten.

JAMES WHITECOTTEN, called as a witness for the Petitioner, being first duly sworn, testified as follows:

Direct Examination.

- Q. (By Mr. Nicoson.) State your name please.
A. James Whitecotten.
Q. Where do you live, James?
A. 1803 North Third Street.
Q. Terre Haute, Indiana?
A. Yes, sir.
Q. Now, prior to March 23, 1935 were you an employee of the Columbian Enameling and Stamping Company?
A. I was.
Q. Did you join in the strike that was declared on that date?
A. Yes, sir.
Q. Subsequent to this strike have you ever returned to work for the company?
A. No, sir.
Q. Now, directing your attention to in the month of May, I will ask you if you had any visitors in connection with the strike matter of the Columbian Enameling and Stamping Company?
A. Yes, sir.
250 Q. Who were the visitors?
A. One fellow by the name of Eckmeyer, and another fellow by the name of Remlinger.
Q. Do you know about what date they called on you?
A. I don't know exactly, don't remember exactly, it was on or around the 15th of May.
Q. Did you have a conversation with them?
A. Yes, sir.
Q. State the substance of that conversation if you remember.
Mr. Jaburek: That is objected to. We had some of this yesterday where employees went among strikers and where certain of the strikers went among other strikers, and tried to get them to come back. We did not object to it.

We think there is something in the record on that and we are going to object to any more of this hearsay testimony.

Trial Examiner Lyons: I would like to know who Mr. Eckmeyer and Mr. Remlinger were.

Mr. Nicoson: That is why I asked him that question, so he may be permitted to tell. In the course of the conversation they told who they were and why they were there. I asked him if he had a conversation and he said yes, and I asked him to tell what the conversation was.

Trial Examiner Lyons: What I want to know from him is who they were according to his general knowledge. Not at this point who they said they were, or did he know what 251 position they occupied with the company, if any.

Mr. Nicoson: Would you care to ask that question or would you like for me to do it?

Trial Examiner Lyons: Well, you might do it.

Q. (By Mr. Nicoson.) Who was Eckmeyer and Remlinger, if you know?

A. Well, prior to the strike they were employees of the company.

Q. Where were they employed?

A. They worked in the press room, the draw press department.

Q. They were not officials?

A. No.

Q. You had a conversation with them at that time?

Q. (By Trial Examiner Lyons.) Were they employees at the time of these conversations with you, that is, were they actually working for the company?

A. Of course I have no way of knowing definitely only what they told me, and they said they were.

Q. You do not know whether they were or not?

A. No, I don't.

Q. (By Mr. Nicoson.) They said they were?

A. They told me they were.

Mr. Jaburek: May I ask that that remark be stricken?

Trial Examiner Lyons: I think that may be stricken out.

I think unless you will show that Eckmeyer and Remlinger were authorized by this company to interview this man, I must say that what they said to him is not competent.

Mr. Nicoson: Just how is that please?

Trial Examiner Lyons: Unless you can show that they were sent by the company or authorized by the company to represent the company in this conversation I do not see how a conversation between him and two men who were employees of the company can affect the respondent.

Mr. Nicoson: We can only relate as to their reference to this witness. Of course we haven't had access to the books of the company, we couldn't prove by any definite knowledge on the part of this witness that these men were actually in the employ. We can prove by this witness that they represented to be in the employ, and they were sent by this company for the purpose of which I will later bring out.

Trial Examiner Lyons: Of course it is a rule of evidence that the extra judicial statement of an agent that he is an agent is not admissible.

He can state upon the witness stand that he is an agent and that evidence is admissible for what it is worth. In these other cases there has not been any objection, and even if there was, the situation is somewhat different because some of the other men in the other cases were said to be foremen or other officials.

And that was not very far away from the proper rule 253 of evidence, but it seems to me that here we are going so far away that even in a hearing of this sort I ought not to accept it unless there is some proof of these men's agency other than what they said to him at the time.

Mr. Nicoson: Then your ruling is that it is incompetent?

Trial Examiner Lyons: That as now presented the evidence is excluded.

Mr. Nicoson: That is all.

Mr. Jaburek: No cross-examination.

Trial Examiner Lyons: You may step down.
(Witness excused.)

Mr. Nicoson: Mr. Hough.

JAMES HOUGH, called as a witness for the Petitioner, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Nicoson.) You may state your name.

A. James Hough.

Q. Where do you live, Mr. Hough?

A. 1623 Blaine, Terre Haute, Indiana.

Q. Now, prior to the 23rd day of March, 1935, were you working in the Columbian Enameling and Stamping Company mill?

A. Yes, sir.

Q. Did you join with the strike on that day?

A. Yes, sir.

Q. Directing your attention to the latter part of July, 254 were you called on by any official of the company?

A. July 25th, the evening of July 25th I was called upon by Cash Irwin who was foreman of the beading department.

Mr. Jaburek: I did not get that name.

The Witness: Cash Irwin.

Q. (By Mr. Nicoson.) Did you have a conversation with Mr. Irwin?

A. Yes, sir, he came and knocked at the door and said—

Mr. Jaburek: I object to what he said.

The Witness: He came to the door and knocked—

Mr. Nicoson: Just wait a minute.

Trial Examiner Lyons: Wait.

Mr. Jaburek: The same objection.

Trial Examiner Lyons: The witness said he was a foreman of the beading department.

Mr. Jaburek: The fact he was a foreman does not make it admissible unless there is something to show that the foreman was deputized.

Mr. Walker: Special agent.

Trial Examiner Lyons: In view of the frequency with which similar interviews were had by other foremen and officials, it seems to me that there is enough in the record to satisfy me that any foreman who came on such a mission had authority to interview these men for that purpose.

If the statements made by this witness as to the conversation that ensued do not support that ruling, then I shall order it stricken out, but I am going to hear what he said. The question may be answered.

A. He stated he was sent by Mr. Gorby to call on me and talk to me. Mr. Grabbe, I take that back.

Q. (By Mr. Nicoson.) What else did he say?

A. He asked me if I wanted to return to work. I told him I didn't like the idea of returning under armed guards.

Q. Was there anything else said?

A. Yes, sir. He said there was no need to worry about anything because we would be protected by the city officials, the police and the National Guards to and from work.

Q. Was there anything further said?

A. And there was something concerning the union. He

said that there would be no union and that Mr. Grabbe and officials wouldn't meet the Scale Committee, neither would they meet with Mr. Taylor.

Q. Was there any further conversation?

A. There was nothing to speak of, and I told him I would think it over about returning to work. He said he would have to know that night, if he didn't know they would have to hire someone in my place.

Q. Was there anything further?

A. Yes, sir. I returned that morning, one day in the plant.

Q. What morning was that?

256 A. That was July 26th.

Q. And did you remain?

A. I was in the plant for nine hours.

Q. Are you still in the plant?

A. No, sir.

Q. Was that the only time that you were there?

A. That is the only time.

Q. Did you have any further conversation with Mr. Irwin?

A. No, sir, I haven't saw Mr. Irwin since then.

Mr. Nicoson: That is all.

Cross-Examination.

Q. (By Mr. Jaburek.) When you returned, you went of your own free will?

A. I went back after he stated I would lose my job, and saw the conditions of the place and I didn't want to work under the conditions that they had. I also told Mr. Irwin—

Q. You have answered the question. The plant had reopened on July 23rd, had it not?

A. Yes, sir.

Q. This was two days later that he talked with you?

257 A. No, that was July—the night he talked to me was July 25th.

Q. And quite a number of people working in the plant on the day you returned?

A. I have no idea because I didn't see them.

Q. You saw some people working?

A. I saw some.

Q. How many in your own department?

A. I think there were four or five, they were all new workers.

- Q. Did you see some armed guards there?
- A. There were guards there at the gate, and I was given a pass and I had to show that pass before I could be entered.
- Q. And the guards did not harm you?
- A. No, sir.
- Q. Did not manifest any unfriendly attitude towards you?
- A. No, sir.
- Q. And were there police there?
- A. There were police around the plant at that time.
- Q. And the militia was there also?
- A. The militia was around about the place.
- Q. And they did not attempt to do you any harm either?
- A. No, sir.
- Q. Were there any picketers around there?
- A. Not at that time, they had been driven away at the time the militia came in.
- Q. They were a little distance away from the plant, were they not?
- A. They were around the plant, the majority of them, outside.
- Q. How many were there around the plant?
- 258 A. I haven't an estimate of what they were.
- Q. Well, your best recollection?
- A. Well, I should judge around three or four around at the front gate.
- Q. Three or four?
- A. Yes.
- Q. Were there any more any place else?
- A. They were stationed around I believe around on Plum Street, the street adjoining that plant.
- Q. And the other entrance?
- A. I didn't see the other entrance.
- Q. And how many were there at Plum Street?
- A. Well, I have no idea how many there were.
- Q. Well, your best guess.
- A. I think about two or three stationed along the street.
- Q. Two or three?
- A. Yes, sir.
- Q. And then further back from the plant on the streets leading to it you saw crowds of them gathered there, did you not?
- A. Crowds?
- Q. Yes.
- A. No, I didn't see any crowds.

Q. Did you see any crowds of pickets there at any time?

A. Before they were driven away by the militia there were pickets there.

259 Q. How many were there then?

A. Well, I wouldn't—I couldn't judge the exact amount, there were shifts.

Q. Well, your best recollection?

A. I should judge about fifteen to twenty at least anyway at each gate.

Q. At each gate?

A. Yes, sir.

Q. And were they all strikers?

A. Yes, sir.

Q. And how many gates are there?

A. Four gates.

Q. So that there were four times fifteen or twenty, or from 60 to 80?

A. Yes, sir.

Q. And weren't there times when there was a greater number of pickets on the line there?

A. Yes, at times there were more, at times there were less.

Q. And at the times that there were more, how many were there on those occasions?

A. Well, I have no record of it. I only saw there was larger crowds.

Q. Well, give us your best recollection.

A. Well, there were anywhere from ten to fifteen or twenty at times.

260 Q. And sometimes fifty and one hundred?

A. All around the plant, yes.

Q. And sometimes 200?

A. Well, I couldn't say to that.

Q. Well, what is your best recollection of it, that there were 200 or more at times?

Mr. Nicoson: Well, I think he has answered that, he said he couldn't say. We object to further questioning on that, he has been over it, he said he couldn't say.

Trial Examiner Lyons: Of course there must be some reasonable limit to your attempt to get the answers that you desire. You ought to stop pretty soon I think.

Mr. Jaburek: There will be no further cross-examination of this witness.

Mr. Nicoson: That is all.

Trial Examiner Lyons: That is all. Oh, I have just one question.

Examination by Trial Examiner Lyons.

Q. (By Trial Examiner Lyons.) When you went back on the 26th to work did you present yourself at the usual gate where you had always gone into work?

A. Well, part of the time I used one gate and part of the time I used the other.

Q. Well, I mean—

A. It was the front gate, the gate I usually used.

261 Q. The gate you used before?

A. Yes, sir.

Q. And were you met there at the gate by somebody?

A. No, sir. I was met by the foreman and escorted in to the employment office by two or three of the foremen.

Q. Was one of those foremen Irwin?

A. Yes, sir, he was my foreman.

Q. Was he the first man that met you there that morning?

A. Yes, sir, I met him at his home.

Q. Oh, you met him at his home?

A. I met him at his home that morning.

Q. And he walked with you?

A. To 15th Street I believe it was, and there were more foremen, three or four.

Q. Well, Irwin was with you all of the time from the time you entered his house until you went to the plant?

A. Yes, sir.

Trial Examiner Lyons: That is all.

Mr. Jaburek: I would like to ask another question.

Trial Examiner Lyons: Very well.

Cross-Examination (Cont.).

Q. (By Mr. Jaburek) Did you go to the employment department before you went to work?

A. They stopped me at the employment department.

Q. And you went into the employment department?

262 A. Yes, sir.

Q. And filled out an application for employment?

A. No, sir, just signed my name to a little card that they had.

Q. But an application blank, yes or no?

A. Yes, sir.

Mr. Jaburek: That is all.

Mr. Nicoson: Just a moment.

Redirect Examination.

Q. (By Mr. Nicoson) You said that you signed your name to a little card?

A. A little slip, yes.

Q. Do you know what was on that card?

A. It was just for rehire.

Q. Was there any caption on the top of the card, did you read it?

A. Yes, sir. There was practically nothing except for the employment. I couldn't state the words on the ticket, just concerning the employment at the stamping mill.

Q. Were there any questions to be answered on that card that you signed?

A. No, sir.

Q. You do not know whether that was an application for employment or not?

A. That was for employment.

263 Q. You do not remember the substance of the card?

A. I don't remember the exact wording, but it was for reinstatement or rehiring back into the plant.

Q. Was there anything else on that card?

A. No, sir.

Q. Just to the best of your recollection how was the wording placed on the card?

Mr. Jaburek: You mean what was on the card?

Mr. Nicoson: Yes.

The Witness: I don't believe I can recall exactly how the card was worded, or the slip.

Q. (By Mr. Nicoson) How large was the card?

A. Oh, I should judge about the size of a postal card.

Mr. Nicoson: I think that is all.

Mr. Jaburek: That is all.

Trial Examiner Lyons: That is all.

(Witness excused.)

Mr. Nicoson. Arthur Wyrick.

ARTHUR WYRICK, called as a witness for the petitioner,
being first duly sworn testified as follows:

Direct Examination.

Q. (By Mr. Nicoson) State your name.

A. Arthur Wyrick.

Q. Where do you live, Mr. Wyrick?

A. 8½ North Fourth.

264 Q. Mr. Jaburek: How do you spell that name?

The Witness: (Spelling) Wyrick, W-y-r-i-c-k.

Q. (By Mr. Nicoson) Is that in the city of Terre Haute,
Indiana?

A. Yes, sir.

Q. Now, prior to the 23rd day of March 1935, were you
working in the Columbian Enameling and Stamping plant?

A. Yes, sir.

Q. Did you join the strike that was declared on that day?

A. Yes, sir.

Q. Have you since worked for the company?

A. No, sir.

Q. Directing your attention to the latter part of July,
1935, did you have any visitors in connection with your em-
ployment with the Columbian Enameling and Stamping Com-
pany?

A. I had two.

Q. Who were they?

A. Carl Cusick and Roy Naper.

Q. Was that in July that they called on you?

A. I think that was in June, but they called later in July,
Carl Cusick did, but Naper never.

Q. Now, who is Carl Cusick?

A. Foreman.

Q. Of what department is he a foreman?

A. The dipping department.

265 Q. Who is Roy Naper, if you know?

A. I don't know what he does.

Q. I will ask you if Roy Naper is not now the employ-
ment manager?

Mr. Jaburek: Objected to, let the witness testify.

Trial Examiner Lyons: I don't think it makes any differ-
ence what he is now, it is what he was then.

Q. (By Mr. Nicoson) Did you have a conversation with Cusick on that date?

A. Yes.

Q. What was the conversation?

Mr. Jaburek: The same objection, Mr. Examiner.

Trial Examiner Lyons: The objection is noted; I will admit it.

Q. (By Mr. Nicoson) You may answer.

A. He just asked me what I thought about the strike situation. I told him I hadn't thought much about it. He asked me how about coming back to work. I told him no, I didn't care to come back to work under the conditions. He told me I would get my same job back, he had his same job back and things would go along just as good as they were.

Q. Was that all of the conversation?

A. No. And so I told him that I didn't want to talk about it right then, so he said he would come back later.

Q. He did come back later?

266 A. He came back around the 15th of July.

Q. Was there anyone else with him at that time?

A. He brought Bud Hawkins at that time.

Q. Who do you mean when you refer to "He"?

A. Carl Cusick.

Q. Carl Cusick; and who is Bud Hawkins?

A. He is a boss of some kind in the dipping end I think.

Q. That is in the plant of the Columbian Enameling and Stamping Company?

A. Yes, sir.

Q. Now, did you have a conversation with those men at that time?

A. Yes, at that time they said—

Mr. Jaburek: May we have who said what?

Trial Examiner Lyons: Yes, tell us what Cusick said.

The Witness: Well, Cusick said he was back to get me to go to work. He said that was his last time he was coming back. He said he would give me till 6 o'clock that evening to either telephone him or come to work whichever I wanted to do. And Bud Hawkins then said—

Mr. Jaburek: Just a moment, we object to what Hawkins said.

Trial Examiner Lyons: Well, if Cusick was present. Was Cusick there when Hawkins talked?

The Witness: Yes, both of them came together the 267 last time.

Trial Examiner Lyons: I think we can hear what Hawkins said.

The Witness: Hawkins said if I didn't come back to work by 6 o'clock that evening, telephone them or something I wouldn't have no job there again.

Q. (By Mr. Nicoson) Did these men say if they were working or not?

A. They said they was hired by the company, their time was precious.

Q. Did they say if they were on duty at that time?

A. Yes. They said their time was precious, they were in hurry, to talk fast.

Q. Was that the last conversation you had with them?

A. Yes.

Mr. Nicoson: That is all.

Cross-Examination.

Q. (By Mr. Jaburek) What was the date of this last conversation?

A. Around the 15th.

Q. Of July 1935?

A. 1935.

Q. Was it before the plant reopened?

A. I couldn't say because I don't remember the date the plant reopened.

268 Q. They did not threaten you in any way if you did not come back with any physical violence?

A. No.

Q. And before that you had a visit in June from Cusick?

A. From Cusick and Naper.

Q. And Cusick also asked you to come back at that time?

A. Yes.

Q. What part of June was that?

A. I couldn't say what part of June it was.

Q. Well, your best recollection, the first half of June?

A. It was about the middle of the month, I think.

Q. About the middle of June?

A. Yes, sir.

Q. So that there was about 30 days between the first visit and the last one?

A. Something like that.

Mr. Jaburek: That is all.

Mr. Nicoson: Just a minute.

Redirect Examination.

Q. (By Mr. Nicoson) In their questioning, or requesting you to come back to work to which you have testified, was anything said as to the condition you might return under?

Mr. Jaburek: Now, I object to counsel leading the witness, and further there has been a cross examination and now he is on redirect examination suggesting something new again after the conversation is all in.
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Trial Examiner Lyons: Well, of course, if there was something that was said that was relevant, if it is established that the witness has exhausted his recollection, I suppose you can put it in.

The fact that it was suggested by the cross examination does not make it any less admissible, it seems to me. If you want to show through questions to the witness that he has forgotten something that took place, then you may put the question to him.

Mr. Nicoson: Will you read the question please?

(The question referred to was read by the reporter as above recorded.)

The Witness: Well, there was something said about a little better job. Have my old job to start with and a little better job later on.

Q. (By Mr. Nicoson) Was that all?

A. I would be furnished protection from the mill home and from home to the mill.

Q. Anything further?

A. They said they didn't think that the company would ever run under union labor because the company had run its own business for 33 years and didn't intend for anybody else to help them.

Mr. Nicoson: That is all.

Q. (By Mr. Jaburek) Now, you hope in any line of work always to get a better job, do you not?

A. Certainly.

Q. You are never going to be satisfied with the job you have?

A. No.

Q. Are you?

A. No.

Q. And you did not consider it coercion when they told you about protection for you if you went back to work?

Mr. Nicoson: Now just a minute. He is calling for conclusion now. I do not think that is proper cross examination.

Trial Examiner Lyons: Well, it has not been suggested as I recall it that there was coercion. Of course on cross examination a conclusion of a witness may be called for in order to test his veracity or recollection, but that seems to put into the witness' mouth something pretty far afield from his testimony.

Mr. Jaburek: All right, we will withdraw the question. There will be no further cross examination.

Mr. Nicoson: That is all.

Trial Examiner Lyons: That is all.

(Witness excused.)

271 Mr. Nicoson: Does the Trial Examiner wish to hear further witnesses before the noon recess?

Trial Examiner Lyons: I notice it is customary in these parts to take your noon recess at 12:30, is it?

Mr. Nicoson: That is right.

Trial Examiner Lyons: We will take the recess now and reconvene at 1:45.

(Whereupon at 12:30 o'clock p. m. a recess was taken until 1:45 o'clock p. m.)

After Recess.

The hearing was resumed at 1:45 o'clock p. m. pursuant to the taking of recess.

Trial Examiner Lyons: You may proceed.

Mr. Nicoson: Mr. Schafer.

MAX SCHAFER, called as a witness for the Petitioner, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Nicoson) You may state your name.

A. Max Schafer.

Q. Where do you live, Mr. Schafer?

A. 230 South 14th Street, Terre Haute.

Q. Have you any connection with the Central Labor Union of Vigo County?

A. I am vice president of the Central Labor Union.

Q. During the latter part of October 1935 were you 272 requested by the Scale Committee of the Stamping—

Mr. Jaburek: Objected to if he was requested; let him say if he had conversations and what he did as a result of them.

Mr. Nicoson: Well, if you want it that way.

Trial Examiner Lyons: The word "requested" of course is a conclusion.

Mr. Nicoson: All right.

Trial Examiner Lyons: You may have him state if anything was said by members of the union, and what he did as a result of that.

Mr. Nicoson: All right.

Mr. Jaburek: Mr. Examiner, my objection goes to that too. That outside the presence of the respondent he cannot say what conversations he had with somebody. He can say he had certain conversations with certain people without saying anything further.

After that he did something that the respondent knows something about. That is my understanding of the proper procedure.

Trial Examiner Lyons: Well, the mere fact he had a conversation and then afterwards did something would not prove he did it as a result of that conversation. We would have to know what was told him. I think he ought to be limited to such parts of the conversation as directed him 273 to convey some information to the respondent.

Mr. Jaburek: Well, it is my understanding that any conversation outside of our presence would be inadmissible. And that is the ground for my objection.

Trial Examiner Lyons: It would be admissible simply to establish the agency, you would not deny that was admissible, would you?

Mr. Jaburek: I am afraid that I would. Take the matter of his conversation, if it is outside of our presence, it is not admissible.

Trial Examiner Lyons: Well, suppose he had a conversation about the weather and then went to see the company, that would not be objectionable, would it?

Mr. Jaburek: No, it would not.

Trial Examiner Lyons: The mere fact that he had a conversation and then went to see the company would not in itself prove he had offered to see the company.

Mr. Jaburek: I see the distinction between those two, but I still believe conversation is inadmissible. He might say he did have a talk and as a result of that talk he did something.

Trial Examiner Lyons: Well, if you allow him to state that as a result of the talk, he can use that phrase, I think that ought to satisfy everybody. You yourself have objected to statements like "I was requested" and you objected 274 to it on the ground that they were conclusions.

Mr. Jaburek: What I meant was that after that he went and did something of course. I do not think it is proper for him to say as a result of it he did something.

If the Examiner understands me to mean it that way, of course I did not mean it that way.

Trial Examiner Lyons: Well, suppose we cut the Gordian Knot, Mr. Nicoson. Suppose we ask him if he had a conversation with representatives of the union, and if he said he did and went to talk with the representatives of the company, we will hear what he said to the representatives of the company.

Maybe that will bring in all that you want, we will see. If it doesn't, we will take it up later.

Mr. Nicoson: Will you read the question, please.

(The question referred to was read by the reporter as follows:

"Q. During the latter part of October, 1935 were you requested by the Scale Committee of the Stamping—")

Mr. Nicoson: Strike that out please.

Q. (By Mr. Nicoson) During the latter part of October, did you have a conversation with the Scale Committee of the Stamping mill union?

A. I did.

Q. And after that conversation did you have a meeting with the management or any of the managers of the 275 Columbian Enameling and Stamping Company?

A. I did.

Q. Do you know about what date that happened?

A. I believe it was October 28, 1935, that is I met Mr. Gorby.

Q. Where did you meet Mr. Gorby?

A. In the office of the Columbian Enameling and Stamping Company.

Q. And did you have a conversation at that time concerning the strike situation, with Mr. Gorby?

A. I did.

Q. Will you state the substance of that conversation, what was said?

A. I told Mr. Gorby that I was there in the interests of peace and wanted to do everything I could to try to get the strike adjusted.

I proposed to Mr. Gorby that he agree to re-employ all the people that had gone out on strike in March without any prejudice, on the same terms and conditions as existed previous to the strike.

I assured Mr. Gorby that the difficulty could be settled on those terms. Mr. Gorby refused.

Q. Was there anything further said at that time?

A. There was considerable discussion, we were together for two hours.

276 Q. Was there anything said in Mr. Gorby's presence concerning your connection with the labor movement?

A. I don't understand the question.

Mr. Nicoson: Read the question please.

(The question referred to was read by the reporter as above recorded.)

The Witness: Oh, yes. Mr. Gorby knew that I was vice president of the—

Mr. Jaburek: Objected to, what Mr. Gorby knew.

Trial Examiner Lyons: Limit it to what Mr. Gorby said. If he said he knew it that is all right, or if he said anything about it you can tell what he said.

The Witness: I told Mr. Gorby I was vice president of the Central Labor Union, and he said he knew that.

I told Mr. Gorby that I was there on behalf of the strike—on behalf of the striking workers of his plant and that I was anxious to get any basis of agreement that we might work out, that I was in a position to submit it to the strikers, and that I knew they would accept any recommendation that I would make to them.

Mr. Gorby said that I was asking him to discharge people that had been loyal to him, had come to work in his plant after it had been strike-bound, and that he wouldn't do that.

I suggested that he might have a lot of people working in there that were incompetent, and told him that the union 277 did not object to any of the men that had previously worked in the plant, and that were working there then, but that the workers did believe that the others, the outsiders, that had come in there to take their positions should

rightfully be discharged and the positions given back to those men that were still on strike.

Mr. Gorby did not agree with me. Mr. Gorby told me that as far as the management of the plant was concerned, there would be no agreement with any union because the union would be in the minority in the plant at the present time. He also told me that they were willing to have those that were out on strike go to the employment office, hand in their names, and that they would re-employ them as, if and when they needed them.

However, that there were some that they never would re-employ, Mr. Gorby said, those that had been guilty of violence would never be re-employed.

I told Mr. Gorby we did not expect him to re-employ people guilty of violence, but we believed that a man was presumed to be innocent until he had been proven guilty.

I asked Mr. Gorby if he would set a definite time as to when he would re-employ the men that were still on strike. Could he do it by December 1st or January 1st. Mr. Gorby said no, he could not say. We were unable to come to any basis of agreement and I finally took my departure with 278 the understanding that—

Mr. Jaburek: Just a moment. Might we have what was said?

Trial Examiner Lyons: Yes, not what you understand, not what your understanding was, but state what was said by each of you.

The Witness: Saying to Mr. Gorby that we ought to both think about it, see if we could think of some way of settling this difficulty, and that if I thought of any plan that would work out I would get in touch with him, and I asked him to do the same if he could think of anything, get in touch with me.

And that was the end of the conference. Mr. Gorby agreed to do that, if he could think of anything that would help in the situation.

Q. (By Mr. Nicoson): Has there been any further contact between you and Mr. Gorby or the management?

A. No.

Mr. Nicoson: I think that is all, if the Examiner please.

Mr. Jaburek: Will you pardon me just a moment, Mr. Examiner?

Trial Examiner Lyons: All right.

Mr. Jaburek: No cross-examination.

Trial Examiner Lyons: That is all, Mr. Schafer.

(Witness excused.)

279 Mr. Nicoson: Mr. Hartzler.

PAUL HARTZLER, called as a witness for the petitioner, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Nicoson): You may state your name.

A. Paul Hartzler.

Q. Where do you live?

A. Rural Route 3, Terre Haute.

Q. Prior to the 23rd day of March 1935 were you working in the plant of the Columbian Enameling and Stamping Company?

A. Yes, sir.

Q. Did you join the strike called on that day?

A. Yes, sir.

Q. Have you worked in the plant since that time?

A. No, sir.

Q. Directing your attention to the latter part of July, were you visited by anyone in connection with the Stamping mill strike situation?

A. I had a visit from two men.

Q. Who were they?

A. Mr. Bud Hawkins and Mr. Carl Cusick.

Q. What is Mr. Hawkins' connection with the company, if anything?

A. He has always been a foreman.

Q. What department?

280 A. The enameling department.

Q. And what connection has Mr. Carl Cusick with the company, if any?

A. Well, he had been a foreman. I don't know whether he was then or not.

Q. He was a foreman at the time of the strike?

A. Yes.

Q. Did you have a conversation with him—with those two men about that time?

A. Yes, sir.

Q. What was said?

Mr. Jaburek: May we have our objection, for the reasons heretofore stated?

Trial Examiner Lyons: On the usual ground, yes.

Q. (By Trial Examiner Lyons): Both men were together as I understand it, Mr. Hartzler?

A. Yes, sir.

Q. At this interview?

A. Yes, sir.

Trial Examiner Lyons: All right.

Q. (By Mr. Nicoson): What was said?

A. Well, Mr. Cusick didn't say much, only that he had been a member of our organization and that he was going back to work because he thought more of his bread and butter than he did of the organization. And Mr. Hawkins 281 talked to me for a while to try to get me to go to work.

Q. (By Trial Examiner Lyons): Don't say what he tried to do, tell us what he said, as near as you can remember.

A. Well, he said I would have a chance to come back into the employ of the company, and that if I decided to do that, that I would have to decide before the following Monday, that was on the 23rd of July, and I would have to decide before the following Monday and call up the foreman in my department or I wouldn't have any job.

Q. (By Mr. Nicoson): Was there anything further?

A. Well, they didn't say a lot more than I can remember.

Q. Did they say whether or not they were employed at that time?

A. Well, they said they were company men.

Mr. Nicoson: I think that is all.

Cross-Examination.

Q. (By Mr. Jaburek): Did they talk to you on Tuesday the 23rd?

A. Yes, sir.

Q. The 23rd of July, 1934?

A. Yes, sir.

Q. And gave you until—or said that you had a chance to come back until the following Monday, that would have been Monday, July 29th?

A. I imagine.

282 Q. And you thought the matter over?

A. I thought the matter over and didn't report.

Q. And decided not to come back?

A. Yes.

Mr. Jaburek: That is all.

Q. (By Mr. Trial Examiner Lyons): Are you a member of the union?

A. Yes, sir.

Q. Were you at that time?

A. Yes, sir.

Trial Examiner Lyons: That is all. Are there any further questions?

Mr. Nicoson: No further questions.

Trial Examiner Lyons: Step down, Mr. Hartzler.

Mr. Jaburek: Will you pardon me just a moment?

Trial Examiner Lyons: Do you want any more from this witness?

Mr. Jaburek: Yes.

Cross-Examination (Contd.).

Q. (By Mr. Jaburek): Hawkins was a member of your union at the time he talked to you?

A. No, sir.

Q. Or Cusick was?

A. Cusick had been suspended I believe.

Q. Do you know that he had been suspended?

283 A. Well, I think—I am pretty certain, because he said he had been doing this kind of work and that the union did not approve of it.

Q. He had been a member of the union prior to that time, however?

A. Yes, sir.

Q. And when did you join the union?

A. Well, I joined first, the beginning of it.

Q. About June 1934?

A. I imagine.

Q. Do you know when Cusick joined it?

A. No, I don't.

Q. Do you know when Cusick was suspended?

A. Well, it must have been when he started his activity—

Q. Do you know?

A. No, I don't.

Q. Did you know when he talked to you on this date that he had been suspended?

A. I am not certain.

Mr. Jaburek: That is all.

Mr. Nicoson: That is all.

(Witness excused.)

Mr. Nicoson: I will recall Mr. Cox.

OTIS COX, recalled as a witness for the Petitioner, being previously duly sworn, further testified as follows:

284 Trial Examiner Lyons: You have been sworn already, Mr. Cox?

The Witness: Yes, sir.

Direct Examination.

Q. (By Mr. Nicoson): You may state your name please.

A. Otis Cox.

Q. You are the same Otis Cox that testified in this proceedings yesterday?

A. Yes, sir.

Q. Now, directing your attention to the examination yesterday there was some request for union records of membership.

A. There was.

Q. That was made to you by the Trial Examiner. Have you those records with you at this time?

A. I have.

Q. What—will you recite from the records in the month of March 1935, how many members your organization had?

A. 485.

Q. How many were there in the month of February 1935?

A. 478.

Q. And in January 1935?

A. 476.

Mr. Nicoson: Do you care for anything further on that, your Honor?

Trial Examiner Lyons: Well, I think—

285 Mr. Nicoson: The question arose yesterday as to the membership, and he was testifying from memory.

Trial Examiner Lyons: And we wanted to verify it.

Mr. Nicoson: You requested the records.

Trial Examiner Lyons: Yes. It seems to me now perhaps we ought to have that membership relative to the dates al-

leged in paragraph 6 of the complaint, to-wit, July 22nd, September 20, and October 11, that is take it by months.

Q. (By Trial Examiner Lyons) Have you the records there for the month of July 1935, or did you only bring the ones that they have inquired of?

A. Your Honor, that requires a bit of explanation. May I explain it?

Mr. Nicoson: I think I can clear that up.

Q. (By Mr. Nicoson) Those records that you have testified from are your permanent records, copies of which have been forwarded to the American Federation of Labor showing your paid up membership?

A. Yes, sir.

Q. And subsequent to the strike, did the American Federation of Labor exempt you from paying your tax to that organization?

Mr. Jaburek: Oh, just a moment, we object to that, that is immaterial.

Mr. Nicoson: I am trying to show why he does not have the records for July. That there weren't any made for 286 the reason that they did not have any per capita tax to remit.

Mr. Jaburek: I think that is the answer, they did not make any report for that time.

Trial Examiner Lyons: If that is the only objection—if that is the only object of the offer, I will take it only for that purpose.

Mr. Nicoson: That is the only object.

Trial Examiner Lyons: If there was a reason in the American Federation of Labor why they did not have records of membership for the month of July, the month of September and the month of October, would it apply to those two months also?

The Witness: For March.

Mr. Nicoson: I do not think I quite understand your question.

Trial Examiner Lyons: As I understand it what you have just put in was the explanation of why he did not have records of membership for July.

Mr. Nicoson: That is right.

Trial Examiner Lyons: Because the rules of the organization did not require it.

Mr. Nicoson: They are not required to pay any dues, and consequently they would not have any definite record of who was suspended and who was not suspended.

Trial Examiner Lyons: You have stated that was so 287 as to July.

Does that show as to September and October also?

Mr. Nicoson: Ask the witness.

Q. (By Trial Examiner Lyons) Does that same explanation apply to the months of September and October?

A. The months subsequent to March 1935.

Q. That is you have nothing subsequent to March, 1935 in the way of official records of membership?

A. No.

Trial Examiner Lyons: That is all.

Mr. Nicoson: That is all.

Cross-Examination.

Q. (By Mr. Jaburek) Mr. Cox.

A. Yes, sir.

Q. Did all of the members of your union go out on strike on the 23rd of March?

A. Well, I can't answer that question.

Q. Did any of the members of your union go out on strike after March 23, 1935?

A. Most members of our union went out on strike March 23rd.

Q. Well, how many went out later? You say they all went out on strike March 23, 1935?

A. Yes.

Q. In Respondent's Exhibit No. 3 for identification, being the Terre Haute Tribune for August 28, 1935, you and 288 Mr. Brown and Mr. Heuer joined in a joint statement which you have heretofore identified, in which you say: "Of the 447 members of the union who walked out on March 23 you still have over 400 standing by the union."

Now, which statement is correct, the 485 you mention now or the 447 you mentioned then?

A. 447 is incorrect.

Q. It is incorrect!

A. Because these are the records.

Trial Examiner Lyons: Wait a minute, Mr. Jaburek. It seems to me there may be a misunderstanding there. In your last question you ask him whether 485 or 440 is correct. Now, what you read from the paper is of the 440 who went out on strike—

Mr. Jaburek: No.

Trial Examiner Lyons: What did it say?

Mr. Jaburek: Of the 447 members of the union who walked out on March 23, he said they all walked out on March 23.

Trial Examiner Lyons: I thought he said most of them walked out on March 23.

Mr. Jaburek: And afterward he said all of them.

Trial Examiner Lyons: Do you recall saying that? Perhaps we better have the record read. I want you to have the full advantage of any answer made.

Will you read the record please?

289 (The record referred to was read by the reporter as above recorded.)

Trial Examiner Lyons: I think the witness ought to be given an opportunity to explain his answer.

You go ahead and cross examine him. It arose in my mind that he had said most of them. Perhaps I missed something, or perhaps he did, but you can clear it up now.

Mr. Jaburek: Will you read the last question, please?

(The question referred to was read by the reporter as above recorded.)

Q. (By Mr. Jaburek) Look over that statement, Respondent's Exhibit 3, and tell me if there is any other incorrect statement in there?

A. I would like the privilege of correcting that one misunderstanding there if I may.

Q. You said it was incorrect.

Q. (By Trial Examiner Lyons): You said it was incorrect. Do you mean by that it was an incorrect statement in the paper, or that it was incorrect as applying to the full membership of the union?

A. It was.

Q. Which?

A. It was incorrect as applying to the full membership of the union.

Q. Now, as far as that statement is concerned in the 290 paper, whether or not it was correct as it was stated there,—is that statement in the paper correct as far as it goes?

A. As far as I know with the exception of the number of members of the union who walked out. It says 447 here, and that is incorrect.

Q. That is incorrect?

A. The plant ceased operation on the 23rd of March.

Q. Do you mean to say now that all of the members of the union went out on March 23rd?

A. They were all out.

Q. And therefore the 447 is an incorrect number?

A. Yes, sir.

Q. It does not represent the truth of either situation?

A. Yes, sir.

Trial Examiner Lyons: I think that is what you wanted to know.

Now, the last question may be put to the witness.

Mr. Jaburek: Will you read the last question, please?

(The question referred to was read by the reporter as follows:

"Q. Look over that statement, Respondent's Exhibit 3 and tell me if there is any other incorrect statement in there.")

Q. (By Trial Examiner Lyons) Now, you corrected your misunderstanding, now you can answer that last question, 291 was there any other incorrect statement in that newspaper story?

A. I will look at it first.

Q. Go ahead.

(The paper in question was passed to the witness.)

A. I think not.

Q. (By Mr. Jaburek) Was this a written statement that you gave to the newspaper?

A. So far as I can remember, yes.

Q. And you three gentlemen signed it before you gave it to the paper?

A. Yes.

Q. And who prepared it?

A. Oh, I can't just remember now who did.

Q. Did you prepare it?

A. I might have.

Q. Did anybody assist you in its preparation?

A. All statements have to be approved by the three before they can be submitted.

Mr. Jaburek: I ask that that answer be stricken, as not being responsive.

Trial Examiner Lyons: Read the question and answer, please.

(The question and answer referred to were read by the reporter as above recorded.)

Trial Examiner Lyons: I think the answer may be 292 stricken out.

Q. (By Trial Examiner Lyons) Do you recall, the question is now did anyone assist you in the preparation of it, answer that yes or no?

A. Yes.

Q. (By Mr. Jaburek) Who assisted you in the preparation?

A. The co-signers.

Q. Where did you get this figure that you use in here, 447?

A. Can I answer that the way I think will explain it?

Q. Well, start and let us see.

A. On March 23 when the strike was called we permitted some members of our union to remain at work, therefore they did not strike, they remained on the job. At the time we wrote that I didn't know the exact number. These men I refer to worked in the power house, and I tried to hit an average between the difference that that number of men represented.

Q. And you want to correct your testimony of a few minutes ago when you said they all went out on strike on March 23, do you not?

A. Yes.

Q. Now, how many remained in the power house on March 23 after the strike was called?

A. I don't know the exact number.

Q. Well, your best recollection.

A. Oh, around 35.

293 Q. Around 35?

A. Something like that.

Q. All in the power house?

A. In and around, maintenance men. They were all permitted to stay in.

Mr. Jaburek: That is all.

Mr. Nicoson: That is all.

Trial Examiner Lyons: That is all.

(Witness excused.)

Mr. Nicoson: Now, if your Honor please, you requested some evidence or that you be permitted to read the minutes of the Scale Committee, just prior to the noon recess.

Trial Examiner Lyons: Yes.

Mr. Nicoson: You asked the witness.

Trial Examiner Lyons: Off the record.

(Discussion off the record.)

Trial Examiner Lyons: You read those into the record, making a statement of what they are.

Mr. Nicoson: The following is an excerpt from the minutes

of the meeting of the Enameling and Stamping Mill Employees Union No. 19694 held on December 15, 1934:

"The new officers elected are Gordon Brown, president, Elsie Peyton, Vice President, Lois Conder, corresponding secretary, Otis Cox, financial secretary, M. G. Heuer, 294 treasurer, Hazel Anderson, Guide, Fred Latta, Guard. Trustees, James Shaw, Oren Harkness, Edna Jacobs. Scale Committee: Ruth Badders, Merle Badders, Claude Peyton, Elsie Peyton, Ed Morin."

The following is an excerpt from the minutes of the meeting of The Enameling & Stamping Mill Employees Union No. 19694, April 21, 1935:

"Motion three officers negotiate affairs with company, president, treasurer, financial secretary acting as sub-committee. Motion carried."

Mr. Jaburek: We will read into the record also part of the constitution and by-laws of the petitioner union which has a bearing on the scale committee.

Trial Examiner Lyons: Yes, go right ahead.

Mr. Jaburek: By stipulation of the parties by their respective counsel it is also stipulated that the following portion of the constitution, by-laws and rules of order of the petitioner union be included in this record.

Trial Examiner Lyons: Well, now, before that, is there any reason why the whole document should not go in?

Mr. Jaburek: There is a lot in that that is not material to the issue at all. I would like to get this into the record, and if you want the whole thing I am willing.

Trial Examiner Lyons: You put that in and if anybody wants the rest there is no objection.

Mr. Jaburek: Article 13, Amendments,—

295 "Section 1: This constitution may be amended by two-thirds vote at any regular meeting of the union, provided the amendment to be voted on has been presented in writing and read at a previous regular meeting."

That was Article 13 of the Constitution.

Article 6 of the By-Laws: Committees.

"Section 1: The Scale Committee shall consist of at least 7 members. The term of office shall be for a period of one year. This committee shall consist of at least three officers, namely, president, financial secretary and treasurer; four members to be elected. The three retiring officers shall be retained in the next term at their option on Scale Committee, the remainder to be duly elected. In event the presiding offi-

cers are re-elected the remainder of Scale Committee shall be elected by vote of the body."

Article 7, Duties of Committee:

"Section 1: The Scale Committee shall have the power to deal with the company on all business concerning this local union pending approval of body. * * * At no time shall less than 5 of Scale Committee which numbers 7 or more deal with company."

Trial Examiner Lyons: May I see the little pamphlet?

Mr. Jaburek: Yes.

Trial Examiner Lyons: If it is not already in the record, Mr. Nicoson, will you show whether the three officers named are the three men that held the offices in 1935, president, treasurer and financial secretary. It seems they did in 1934.

Mr. Nicoson: I think they have just had an election here last week, an election of officers.

Trial Examiner Lyons: I mean in that part of 1935 with which we are concerned, namely prior to the issuance of this complaint.

Mr. Nicoson: I will be glad to go into that. Mr. Heuer, will you take the stand again.

MORRIS G. HEUER, was recalled as a witness for the Petitioner, and having been previously duly sworn, testified further as follows:

Direct Examination.

Q. (By Mr. Nicoson) State your name.

A. Morris G. Heuer.

Q. You are the same Mr. Heuer that testified previously in this cause?

A. Yes, sir.

Q. And I believe you testified that you were an officer of the organization?

A. Yes, sir.

Q. Are the officers of your organization at the present time the same officers who served in 1934? That is not very clear, either,—strike that.

297 Who are your officers at the present time?

A. L. G. Brown, president; Otis Cox, financial secretary; Jesse Davis, corresponding secretary; M. G. Heuer, treasurer; William Boardman, vice president. I do not know who was elected now, it was just last week.

Trial Examiner Lyons: Well, I think he has named the three, that is as far as I care to go.

Ask him if those were the same officers that were in office during the—

Q. (By Mr. Nicoson) Were Brown, Heuer and Cox holding the same offices now that they did the year last past?

A. Yes, sir.

Trial Examiner Lyons: That is all I wanted.

Mr. Nicoson: That is all.

Mr. Jaburek: May I ask a question?

Trial Examiner Lyons: Yes.

Cross-Examination.

Q. (By Mr. Jaburek) Who were the first three officers of the organization to fill those three offices, president, financial secretary and treasurer?

A. Do you mean when the organization was first instituted?

Q. Yes.

A. The same ones.

Q. The same three men?

A. Yes.

298 Q. And when did their first term of office expire?

Mr. Nicoson: I do not like to be objecting, if the Examiner please, but I think the constitution is the best evidence, and if counsel will permit, I intend now to introduce that into evidence.

Trial Examiner Lyons: Was that statement made with reference to the question that has just been asked?

Mr. Nicoson: Yes, sir.

Trial Examiner Lyons: May I hear the question?

(The question referred to was read by the reporter as above recorded.)

Trial Examiner Lyons: Well, if that does appear in the constitution, I suppose it is the best evidence.

Mr. Jaburek: I could not find it there. I will withdraw all of the questions I asked this witness at this time, the two or three questions I asked.

That will be all.

Mr. Nicoson: Just a moment.

Mr. Jaburek: Off the record.

(There was a discussion off the record.)

Trial Examiner Lyons: The constitution and by-laws are now offered, are they?

Mr. Nicoson: Yes.

Trial Examiner Lyons: They are not very lengthy, and both sides will have the advantage of anything in there 299 that they may discover later.

It will be received as Petitioner's Exhibit No. 15.

(The document referred to was received in evidence, and marked PETITIONER'S EXHIBIT NO. 15, Witness Henner.)

Mr. Smith: For the purpose of clarifying the record I should like to introduce additional testimony concerning the business of the Columbian Enameling and Stamping Company, and for that purpose I should like to examine either Mr. Grabbe or Mr. Gorby.

However, the majority of my questioning will be concerning certain information which yesterday they were requested to prepare which they consented to prepare, and I understand now is in the process of preparation.

So with your consent and with the consent of counsel for the company I can wait until that material is prepared tomorrow morning and examine the witness at that time, both on that material and perhaps a few other questions that I might wish to ask.

Mr. Jaburek: Yes, I think so. That is not ready yet, and as soon as it is ready we will be glad to furnish it.

Trial Examiner Lyons: And you accept counsel's advice as to which of those gentlemen is best qualified?

Mr. Smith: No, both gentlemen have been subpoenaed.

Trial Examiner Lyons: And you will make your own choice?

300 Mr. Smith: Yes, I will make my own choice.

Trial Examiner Lyons: Other than that you are asking permission to postpone the examination until tomorrow?

Mr. Smith: Yes, until tomorrow.

Other than that the Board's case is completed, and I would like to have an opportunity to examine them at the time this material is completed.

Trial Examiner Lyons: I take it there is no objection to that.

Mr. Jaburek: Later on, no, no objection.

Trial Examiner Lyons: Then you may proceed if you are ready, Mr. Jaburek.

Mr. Jaburek: I will call Mr. Grabbe.

Before calling this witness I move at this time to strike all of the Cox testimony which refers to the government conciliators, Scheck and Richardson, on the ground that there

has not been shown anything here which in any way connects the company with these gentlemen; or anything shown that the company knew that these gentlemen had communicated with the union and had talked with the union afterwards.

I made my objection at that time and it was put in here subject to being connected up, and it has not been connected up.

Trial Examiner Lyons: You refer to Mr. Richardson and Mr. Sheck?

301 Mr. Jaburek: Mr. Richardson and Mr. Sheck, yes.

Trial Examiner Lyons: Do you contend, either counsel for the petitioner or the Board that that connection has been made up to this time?

Mr. Smith: I feel that it has. I would object to any motion of that type being entertained.

Trial Examiner Lyons: I will hear you on that. I do not recall any evidence that shows that these two labor men ever did talk with the company.

Mr. Smith: Oh, I misunderstand your question.

Trial Examiner Lyons: I admitted the evidence of what the representatives of the union said to these labor conciliators, and what the labor conciliators said to them because I was assured it would be shown that what the labor conciliators said to them was transmitted from the company, and what the union men said to the labor conciliators was transmitted to the company.

I do not recall that there has been any such connection, but I would be glad to hear either of you gentlemen on it, or if you think you can make it at a later stage in the case I won't pass on the motion at the present time.

Mr. Smith: Pardon us a moment.

Trial Examiner Lyons: I want to have a very full hearing, I do not want to have to come back on this.

Mr. Jaburek: Yes.

302 Trial Examiner Lyons: If there is anything that counsel has inadvertently failed to produce where an assurance is made of that seriousness, I want to be sure they are willing it should be passed on at this time.

Mr. Smith: Would it be possible for you to withhold your decision on that until the conclusion of the case, and in event such information is established by further evidence or cross-examination later?

Trial Examiner Lyons: Yes.

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I won't pass on your motion, Mr. Jaburek, at this time. You may renew it later.

Mr. Jaburek: May I renew the same motion as to two other items?

Trial Examiner Lyons: Yes. Any evidence that has been admitted here subject to being connected up, you may at any stage of the case before it is concluded, make a motion to have it stricken out, and I will pass on it if I feel full opportunity has been given to those offering the evidence to produce the connecting evidence.

Mr. Jaburek: Mr. Grabbe.

WERNER H. GRABBE, called as a witness for the Respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Jaburek): What is your name?

A. Werner H. Grabbe.

303 Q. Your address?

A. 147 South 21st Street, Terre Haute.

Q. And your occupation or business?

A. Vice president and secretary of the Columbian Enameling and Stamping Company.

Q. The respondent in this proceeding?

A. Yes.

Q. How long have you been associated with them?

A. Since 1923.

Q. Calling your attention to on or about June 28, 1934, was there any communication received from the petitioner union?

A. Not to my knowledge.

Q. When did you first receive any communication or word from the petitioner union about that date?

A. On July 5, 1934.

Q. What happened on that date?

A. On that day I attended a meeting in the company's factory office at which was present Mr. Pritchel of the Central Labor Union; Mr. Galloway, a labor organizer, and a number of our factory employees whose names I do not remember: Gorby, Sr., Gorby, Jr., and I.

Q. Now, state the conversation that took place at that meeting and who said it and what was said.

A. As I recall it, Mr. Galloway acted as spokesman. In-

formed us that he had organized several industries in
304 Terre Haute and that he had also organized a union for
the Columbian Enameling and Stamping Employees.

That union had received its charter, and the union requested
the company, through him, to sign an agreement.

Q: That is for the company to sign an agreement?

A. Correct.

Q. Did you—did he present you an agreement at that time,
Mr. Grabbe?

A. He did.

Mr. Jaburek: Mark this Respondent's Exhibit 4 for
identification.

(The paper referred to was marked RESPONDENT'S EX-
HIBIT 4 for identification.)

Q. (By Mr. Jaburek): I show you Respondent's Exhibit
No. 4 for identification, entitled "Memorandum of Agree-
ment", and consisting of 3 pages, and ask you if this is the
document that he handed you at that time?

(The document in question was passed to the witness.)

A. That is it.

Q. What further was said at that meeting, if anything?

A. The company refused to sign the agreement.

Q. Is that all that transpired at that meeting?

A. That is all so far as I remember.

Q. When next did you meet with any of the representa-
tives from the petitioner union?

305 A. On July 14, 1934.

Q. Will you tell the Trial Examiner about that.

A. We had received a telegram from Dr. Beckner of the In-
dianapolis Regional Labor Board, requesting us to come to
Indianapolis Saturday afternoon, July 14, 1934.

Q. Do you know what position Dr. Beckner held on the
Indianapolis Board?

A. I do not.

Q. He was connected with the Board in some manner?

A. Oh, yes.

Q. Did you go to Indianapolis?

A. Yes.

Q. Who from the company went to Indianapolis?

A. Gorby, Sr., Gorby, Jr., Kelsey and I.

Q. And did you meet with Dr. Beckner?

A. We met with Dr. Beckner and another member of the
Board whose name I do not recall.

Q. Was anyone else present? ◇

A. There was present at the meeting in addition to those whose names I have mentioned, Mr. Pritchel, a Mr. and Mrs. Baiders, Mr. and Mrs. Peyton, and Messrs. Morin, Heuer and Cox.

Q. These persons whom you named after Pritchel were at that time all employees of your company?

A. They were at that time all employees of the company.

306 Q. Was Mr. Taylor at that meeting?

A. No, sir, he was not.

Q. Now state what was said at that meeting, and what was done, naming persons who took part in the conversation.

A. Mr. Pritchel introduced the meeting by stating that the Stamping Mill Union as represented by those who were present at that meeting, had requested the company on July 5 to sign an agreement, and that the company had refused to sign it.

And Dr. Beckner, speaking for the Regional Labor Board said that he had been informed that the union had called a strike to become effective on the following Monday; that would be the 16th. And that he had received or been given this agreement that the company had refused to sign on July 5, and the purpose of the meeting was to see if some kind of an agreement could not be worked out by him.

So he proceeded to discuss the union's proposed agreement of July 5, 1934, point by point, getting the union's viewpoint—or, rather, getting the unions' view on a point and then the company's and then expressing his own.

Q. Proceed.

A. (Continuing): As a result of that discussion Dr. Beckner dictated to his stenographer a form of agreement, which after the typing had been completed, was given one copy each to the union representatives, and one copy to the company,

and Dr. Beckner requested that signatures be appended 307 of the parties interested; Dr. Beckner signing for the Labor Board those whose names I have mentioned outside of Pritchel, and Mr. Gorby and I signed for the company.

Q. This agreement that Dr. Beckner prepared and which you stated was signed by the several parties, is the Exhibit A which is attached to the answer of the Respondent company?

A. Yes, sir, it is.

Trial Examiner Lyons: There isn't any question about it, is there, Mr. Nicoson?

Mr. Nicoson: No.

Q. (By Mr. Jaburek): Now, during the discussion on the agreement submitted by the union of July 5, Respondent's Exhibit No. 4 for identification, was any mention made about any paragraph thereof upon which Dr. Beckner commented?

A. Yes.

Q. What paragraph—please state what paragraph it was or the substance of it, and what the contents were.

A. Dr. Beckner particularly commented on paragraph 10—

Q. Will you read it?

A. (Continuing): —of the union's proposed agreement, which reads:

"No piece workers shall be penalized while waiting for material, break-down of machinery or any other condition not controlled by the employee."

Q. Now, what was said about that particular clause, 308 if anything?

A. Dr. Deckner explained to those present that that provision was unfair and unjust. That a manufacturer could not be held responsible for a break-down of machinery, and he told those present that such provision should not be included and that he would not include such a provision in an agreement.

Q. And it was not included in the agreement that was finally signed?

A. It was not included.

Q. Calling your attention again to Exhibit A, can you state now the position that Dr. Beckner occupied upon the Indianapolis Regional Labor Board?

A. Chairman.

Q. Was there any further conversation that took place at this meeting that you recall?

A. Yes, there was.

Q. State what it was.

A. There was one comment made by Mrs. Badders that almost broke up the meeting, in which she stated that she would not work with a scab, nor would any other member of the union.

What occasioned that remark I do not know, but the employees, factory employees at that meeting went into a huddle and they decided not to discuss or make remarks of that kind.

Q. That is substantially all that transpired at this 309 meeting?

- A. Yes, it is.
- Q. Was your plant in operation on Monday, July 16, 1934?
- A. It was not.
- Q. State what happened on that date.
- A. The plant was not in operation.
- Q. Was that by virtue of any order of the company's?
- A. No.
- Q. Or was it by virtue of the fact that the employees did not go to work of their own volition?
- A. They did not go to work.
- Q. Of their own volition?
- A. And of their own volition.
- Q. The plant resumed operations on Tuesday, July 17th, 1934?
- A. It did on Tuesday, yes.
- Q. Now, calling your attention to about August 8, 1934, did you hold a meeting with the Scale Committee?
- A. Yes. That is the first meeting that I attended with the Scale Committee, at the company's plant.
- Q. Who was present at this meeting?
- A. At that meeting on August 8, 1934, there was present Mr. and Mrs. Badders, Mr. and Mrs. Peyton, and Messrs. Morin, Heuer and Cox.
- Q. Now, state what was said at this meeting and by whom said.
- A. Mr. Cox acted as spokesman for the group, and 310 stated that the union was having considerable difficulty in collecting union dues; members who had joined had refused to pay, and the collection of the dues themselves was rather a complicated proposition for the union, in that about the only time they had to solicit was during the working day, and if they did not do it then they would have to write letters, and the letters cost postage and expense for the paper.
- So they wanted some, as Mr. Cox stated, sure-fire way of collecting, and the request was made upon the company to institute a so-called check-off system.
- Q. What do you understand to be meant by a check-off system, Mr. Grabbe?
- A. By check-off system I understand to mean where the employer deducts the union dues from all employees' pay and remits to the union.
- Q. Now, what else was said at this conference or at this meeting, if anything?

Trial Examiner Lyons: Mr. Jaburek, in the interest of time, if the recitation of this witness is not going to differ substantially from what has been described as to this matter by other witnesses, perhaps we ought not to hear it, but if you expect to show that other witnesses have given a version of this conference which was different from what this witness is about to produce, you may proceed.

Mr. Jaburek: That is right.

311 Trial Examiner Lyons: I just did not want to spend time going over the same thing.

Mr. Jaburek: We so contend.

Trial Examiner Lyons: All right.

Q. (By Mr. Jaburek): Will you go ahead, Mr. Grabbe, what else was said at this meeting, if anything?

A. I indicated to those present that—

Mr. Nicoson: We object to what he indicated.

The Witness: I told.

Q. (By Trial Examiner Lyons): Tell what you said.

A. I told those present that several considerations were involved which I would have to consider, and that I would give them an answer at the earliest possible moment.

Q. (By Mr. Jaburek): Now, calling your attention to about August 30, did you have occasion to speak with the Scale Committee or any member thereof about that date?

A. Yes. On August 30 there was another meeting with the Scale Committee and the same group were present including —by the way, at the August 8 meeting Gorby, Jr. was present at the meeting.

Mr. Nicoson: We object to about the August 8th meeting in answer to the question now before the witness.

Trial Examiner Lyons: Well, it is not exactly responsive but you can bring it out by a subsequent question. Go on, tell us what happened on August 30.

312 The Witness: The same individuals were present, and Gorby, Jr., and I.

Q. (By Mr. Jaburek): And what was said?

A. At that meeting I explained to the Scale Committee that the legal aspect was involved in their consideration of a check-off system, the state of Indiana having a statute prohibiting the assignment of wages beyond 30 days, and that to keep within the statute it would be necessary for any employee who wished—any employee, a member of the union, who wished his dues deducted from his pay to make up and

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to sign rather a form which at that time we designated as a pay deduction authorization.

I also explained to those present that there would be some considerable additional clerical work involved, and hence expense, and asked the union if they objected to paying that additional expense.

Q. And that covered that meeting, as far as you can recall?

A. Yes.

Q. Now, calling your attention to August 8th, 1934, you started to say something about that meeting when I had questioned you about the meeting of August 30.

Do you want to add something to your testimony about the August 8th meeting?

A. Yes. At the August 8th meeting I called the Scale Committee's attention to the action, or rather actions of 313 themselves and union members in the plant, who during business hours were soliciting their own members for dues and were soliciting other employees to become members in the union.

I told them that during working hours we would have to confine ourselves to the business of manufacturing enameled wear, and not to other matters. That it was causing too much interruption and that it also was affecting the employees insofar as their work was concerned.

Q. Now, what was said by any of the members of the committee, if anything?

A. At that time nothing so far as I remember.

Q. Now going to September 5, 1934, there was another meeting?

A. On September 5 there was another meeting with the Scale Committee. Same individuals present, including Gorby, Jr. and myself.

Q. And who from the union?

A. Beg pardon?

Q. Who from the union?

A. Mr. and Mrs. Peyton, Mr. and Mrs. Badders, and Messrs. Morin, Heuer and Cox.

Q. Go ahead, state what was said at this meeting or done, and who said it.

A. At this meeting the Scale Committee expressed themselves as being satisfied with the idea that they should 314 pay for the clerical and other expense involved in the check-off system, but they wanted one so-called pay de-

duction authorization for a period from date to the expiration of the Indianapolis agreement of July 14, 1934, rather than one such so-called pay deduction authorization for each pay.

Q. Any other matters taken up at that meeting?

A. I don't remember. Oh, yes, I told them that I would take their suggestion under advisement and would notify them promptly, and on or about September 18 Mr. Cox, a member of the Scale Committee, came into my office and I told him that with reference to the statute of Indiana, on the question, we could not accede to their request of the September 5 meeting.

Q. Now, calling your attention again to that September 5 meeting, have you exhausted your memory as to all that was said and done at this meeting?

A. I called their attention again to the importance of confining their union business of soliciting for dues and membership to other than working hours, and I also told them that the Indianapolis agreement applied to them as much as it did to us, in that there was to be no intimidation or coercion on either side. At that time they agreed with me.

315 Q. Now, have you told us all that you remember about what was said at this meeting?

A. I believe so.

Q. For the purpose of refreshing your memory, was anything said by Mr. Heuer as to the purpose of the check-off?

A. Well, the purpose of the check-off was very thoroughly discussed—

Q. What did Mr. Heuer say?

A. (Continuing)—by the scale committee on the first meeting of August 8th.

Q. Did Mr. Heuer say anything to the effect that its purpose was to get the money out of the members? Do you recall such a statement having been made at this meeting of September 5?

A. Yes, I do.

Q. And that was his statement?

A. That was his statement.

Mr. Jaburek: Will you mark this respondent's exhibit 5 for identification?

(The paper referred to was marked respondent's exhibit 5 for identification.)

Q. (By Mr. Jaburek): I show you respondent's exhibit 5

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for identification, being a notice to the employes belonging to the union, dated September 18, 1924, and signed by you as general manager.

316 (This exhibit was passed to the witness.)

Q. Have you seen that before?

A. Yes.

Q. State what, if anything was done with it?

A. That was posted on the company's bulletin boards.

Q. How many bulletin boards?

A. I will guess about 15.

Q. On the date indicated on the notice?

A. On or about that date.

Q. Calling your attention to the next day, September 19, did you have occasion to talk with Mr. Cox about the notice on that date?

A. Yes. I informed him of the contents of that memorandum.

Q. Did you give him a copy of it?

A. I don't remember whether I did or not.

Mr. Jaburek: Will you mark this respondent's exhibit 6 for identification?

(The paper referred to was marked respondent's exhibit 6 for identification.)

Q. (By Mr. Jaburek): I show you respondent's exhibit No. 6 for identification, a letter of October 1, 1934.

(The exhibit was passed to the witness.)

Mr. Jaburek: Mr. Examiner, I served notice upon the union to produce four certain originals.

Trial Examiner Lyons: You say you have?

317 Mr. Jaburek: No, it is the other way around, strike that out, please.

Q. (By Mr. Jaburek): I show you respondent's exhibit No. 6 for identification, a letter signed by the scale committee dated October 1, 1934. Will you state whether or not you received such a letter.

A. We received it.

Q. Did you make any reply to that letter?

A. Yes. We replied to it, asking the union what was meant by disassociation.

Q. And you replied on or about October 4, 1934?

A. Yes.

Mr. Jaburek: Now, this is the document that I served notice on the union to produce the original.

Mr. Nicoson: I think I know what you mean, but I do not think we have that, we could not find it.

Mr. Jaburek: You are willing to stipulate it may be introduced when the time comes?

Mr. Nicoson: Just a minute, please.

Trial Examiner Lyons: I think this would be a good time to take a short recess.

(Whereupon a recess was taken, after which the proceedings were resumed as follows):

Trial Examiner Lyons: All right, gentlemen; proceed.

Mr. Jaburek: In support of my introducing a copy of 318 a letter, I would like to introduce, or file with the Board a demand for the production of the originals.

Trial Examiner Lyons: Well, that won't be necessary if counsel does not object to that going in on the ground that it is a copy.

Mr. Nicoson: Everything except the letter of October 4, which we have agreed—no objection.

Mr. Jaburek: The others are in evidence.

Mr. Nicoson: Yes, the others are all in evidence.

Mr. Jaburek: This letter of October 4, you do not make any objection?

Mr. Nicoson: No objection.

Mr. Jaburek: Will you mark this respondent's exhibit 7 for identification?

(The document referred to was marked respondent's exhibit 7 for identification.)

Q. (By Mr. Jaburek): Now, showing you respondent's exhibit 7 for identification, being a letter dated October 4, 1934, addressed to the petitioner union, attention of Mr. Cox, Financial Secretary, will you state whether or not that letter was in fact sent to the petitioner union?

A. We sent it.

Q. You mean the company sent the letter out?

A. Yes.

Q. State whether or not on the same day you did any-
319 thing else.

A. On or about that date the company sent copy of that letter, together with a letter of transmittal, to the Indianapolis Regional Board.

Mr. Jaburek: Will you mark this respondent's exhibit No. 8 for identification?

(The document referred to was marked respondent's exhibit 8 for identification.)

Trial Examiner Lyons: Now, the witness said "Sent copy

of that letter," and the record does not show what that letter is. It was marked for identification, but it is not in evidence.

Mr. Jaburek: I am coming to that in a moment, if the Examiner please.

Trial Examiner Lyons: Just make it clear what he is talking about.

Q. (By Mr. Jaburek): Calling your attention to respondent's exhibit No. 8 for identification, being the letter of October 4, 1934, addressed to all employees, will you state what was done with that letter, if anything?

A. That letter was mailed to all employees of the company.

Q. Now, calling your attention to the plant around this time, October 4, 1934, was there any unusual condition in the plant at that time?

A. There was rather an unusual condition in the plant, 320 not only at that time but preceding it, and also some time after that.

Q. State what it was.

A. In that the employees in our plant there generally wanted to know what was going on between the union representatives and ourselves.

Q. Go ahead, anything further?

A. I beg pardon!

Q. Was there anything further that you want to add to that?

A. In my visits through the factory two or three times a day, employees stopped me and asked me what the scale committee was doing, stating they could not get any information out of the scale committee. They thought they had a right to know what was going on, and many of them asked me if the company could not keep them informed by sending them letters, and posting bulletins on the bulletin boards.

Q. State whether or not a copy of this letter was sent to Dr. Beckner at Indianapolis?

A. Which letter are you referring to?

Q. Of October 4th?

A. The disassociation letter? A copy of that was sent to Dr. Beckner.

Mr. Nicoson: We move to strike out the witness' classification "disassociation letter" because there is no letter in evidence. We do not know what he is classifying, it is not 321 in evidence.

Trial Examiner Lyons: The words "letter of disassociation" may be stricken out. I think the answer may re-

main that a copy of the letter of October 4, was sent to Dr. Beckner.

Q. (By Mr. Jaburek.) I am referring to the copy of the letter of October 4, addressed to the union. Was a copy of it sent to the Regional Labor Board at Indianapolis?

A. It was.

Mr. Jaburek: Mark this respondent's exhibit 9 for identification.

(The document referred to was marked respondent's exhibit 9 for identification.)

Q. (By Mr. Jaburek.) I show your respondent's exhibit 9 for identification, a letter of October 22, 1934, addressed to the company and signed by the scale committee. Did your company receive this letter?

(The exhibit was passed to the witness.)

A. It did.

Q. As a result of this letter what, if anything, did you do?

Mr. Nicoson: To which we object for the reason that the answer calls for a conclusion. The letter is not in evidence, nothing before the Board—

Trial Examiner Lyons: I will exclude that question.

Mr. Jaburek: It is a copy of your letter which will get into evidence in due time.

32 (The letter was passed to Mr. Nicoson.)

Mr. Nicoson: Do you wish to introduce it now?

Mr. Jaburek: No, I do not want to introduce any of them now. I will introduce them all at once at the end of my presentation. Do you wish to see these others?

(The exhibits were passed to Mr. Nicoson.)

Q. (By Mr. Jaburek.) After you received that letter, what is the next thing that the company did?

A. We acknowledged receipt of that letter.

Q. Did you also send Dr. Beckner a letter on that date?

A. We did.

Mr. Jaburek: I served notice upon Mr. Cowdrill to furnish the original letter of October 23. Have you the original here?

Mr. Smith: It will be satisfactory to introduce secondary evidence if you so wish.

Mr. Jaburek: Will you mark this respondent's exhibit 10 for identification.

(The document referred to was marked respondent's exhibit 10 for identification.)

Q. (By Mr. Jaburek.) I show you respondent's exhibit

10 for identification, a letter of October 22, 1934, addressed to Dr. Beckner of the Indianapolis Regional Labor Board. Did you send him that letter?

(The letter was passed to the witness.)

323 A. I did.

Q. Now, still on the same date, October 22, 1934, did you receive a call from Mr. Taylor?

A. On or about that date, I did, yes, I did on or about that date.

Q. Who is Mr. Taylor, do you know who he is?

A. Yes, I do.

Q. Please state.

A. Why, he is sitting right over there.

Q. He is the president of—

Q. (By Trial Examiner Lyons.) Identify him some way, if he holds an office, tell us.

A. At that time I was told that he was president of the Indiana State Federation of Labor.

Mr. Nicoson: We move to strike out the answer unless the witness state who told him what connection Taylor had with this proceeding, if any.

Trial Examiner Lyons: The question was: did you have a talk with Mr. Taylor. Then, he was asked who Mr. Taylor was. Is there any dispute that he does hold the office?

Mr. Nicoson: He said he was told. I don't know who told him, or where the information came from. I don't know what he is going to say.

Trial Examiner Lyons: Well, that answer may be stricken out, then.

324 Mr. Nicoson: If there is any question as to Mr. Taylor's identity, we are willing to agree for the benefit of the record that Mr. Taylor is an organizer for the American Federation of Labor, and also he is president of the state of Indiana Federation of Labor.

Mr. Jaburek: And he is the gentleman seated behind you.

Mr. Nicoson: That is right.

Q. (By Mr. Jaburek.) Indicating the gentleman sitting behind counsel, that is the Mr. Taylor who called on you on October 22, 1934?

A. Exactly.

Q. Did you have a conversation with Mr. Taylor on that date?

A. Yes, on or about that date.

Q. State what you said and what he said.

A. The principal subject of conversation was regarding the union's letter of October 4, in which the union informed us that they had passed a resolution that on and after that date any member thereof who was not in good standing would be considered under penalty of disassociation. I asked Mr. Taylor what that meant, and Mr. Taylor did not state what it did mean, but he said that he would look into the matter. And he stated that he would also attend some of the next meetings of the union in order to see that matters were properly handled during the course of the union meetings.

Mr. Jaburek: Off the record.

325 (There was a discussion off the record.)

Mr. Jaburek: Mark this respondent's exhibit No. 11 for identification.

(The document referred to was marked respondent's exhibit No. 11 for identification.)

Q. (By Mr. Jaburek.) I show you respondent's exhibit 11 for identification, being a letter of October 23, 1934, addressed to the company and signed by the eight members of the scale committee.

(The letter was passed to the witness.)

A. I identify it as having been received.

Mr. Jaburek: You do not wish to see it now, Mr. Nicoson?

Mr. Nicoson: No.

Q. (By Mr. Jaburek.) Did your company make any reply to that letter?

A. We replied to that letter, acknowledging its receipt and setting November 23rd—

Mr. Nicoson: We object, if they replied I think the letter would be the best evidence of what was stated.

Trial Examiner Lyons: Is there a reply?

Mr. Nicoson: He stated that there had been a reply, and I think the letter will be the best evidence as to what their reply was.

Mr. Jaburek: All right. We asked you to produce it, 326 now, produce it.

Trial Examiner Lyons: You have the reply?

Mr. Nicoson: It is in evidence, I can produce it, I believe, quite easily.

Q. (By Mr. Jaburek.) Your reply to the union's letter—strike that.

State whether or not this exhibit, being petitioner's exhibit No. 9 for identification, is your reply to that letter from the union?

(The exhibit was passed to the witness.)

A. It is.

Q. Now, calling your attention to November 1st or 2nd, 1934, will you state whether or not you received a letter from Mr. Cowdrill?

A. We did.

Q. Of the Indianapolis Regional Labor Board on that date?

A. We did.

Mr. Jaburek: Mark this respondent's exhibit 12 for identification.

(The paper was marked respondent's exhibit 12 for identification.)

Q. (By Mr. Jaburek.) Showing you respondent's exhibit 12 for identification, is that the letter you received from Mr. Cowdrill?

A. I did.

Trial Examiner Lyons: What is the date of that?

327 Mr. Jaburek: November 1, 1934.

Mr. Jaburek: If it would suit the Trial Examiner better for me to introduce these as I go along, I will do so, but it seems to me we can save a little time by putting them in at one time.

Trial Examiner Lyons: It makes no difference to me, follow your own method of trying your case.

Mr. Jaburek: That is what I thought, it would be agreeable to you.

Q. (By Mr. Jaburek.) Now, what is the next thing you heard from the union, or any one representing the union?

A. On or about November 19, I received a telegram from Mr. Taylor in which he requested that the scheduled November 23rd meeting requested by the scale committee, be postponed until November 26th so that he could attend it.

Q. It was the meeting held on November 26th?

A. It was.

Q. That is 1934 that you are talking about?

A. 1934 is correct.

Q. Where was the meeting held?

A. In the company's factory office.

Q. And who was present at this meeting?

A. Mr. T. M. Taylor. I think all of the members of the scale committee, Gorby, Jr., Kelsey, and during the latter part of the meeting, Gorby, Sr., and I was present during 328 the entire meeting.

Q. Will you state whether or not the letter of October

23 asking for a modification of the agreement, states in what manner the agreement is desired to be modified?

A. It does not.

Q. Now, at this November 26th meeting you said the scale committee was present. How many were there of them?

A. Well, those whom I remember as having been there were the two Badders, and the two Peyton's, Morin, Heuer and Cox. I don't recall that Mr. Brown, the president, was there, although he may have been.

Q. Now, state as nearly as you can what was said and who said it.

A. I remember that I opened the meeting by calling Mr. Taylor's attention to the scale committee's letter of October 22, or October 23, in which they had requested this meeting, which letter served to act as a notice in accordance with one paragraph of the Indianapolis agreement, that that agreement was to be modified, and I told Mr. Taylor that, of course, as he could readily see from that letter, no details pertaining to a modification had been stated therein. So that I really knew nothing about the union's proposal, or, rather, knew nothing of what the union would want modified.

Q. Proceed.

A. Mr. Taylor agreed with me that it would have been 329 proper to have included in that letter, at least in outline form, the modifications, but he stated "The union does not want very much and you can grant it if you wish, very readily. What the union would like to have is a closed shop."

So I told Mr. Taylor and those present that the company would not, and could not grant a closed shop. That it was against the principles under which the organization had operated since 1871. That we believed that every man or woman physically and mentally fit was entitled to a job provided, of course, there was a job, regardless of nationality, religion, nonaffiliation, or affiliation with any labor organization.

That furthermore, we believed that union business should remain union business and not company business. That we could not see that the two could be mixed.

Then, Mr. Taylor said the union would also like to have a 20 per cent wage increase, and I informed them that at the time that is what we all wanted, we all wanted more money, but unfortunately it was something that could not be granted at that time.

I explained to them that the company had severe competition, there being some 25 of 26 manufacturers in the industry.

Evidence on Behalf of Respondent.

of which about 18 were very active competitors and a goodly part of these were making prices very substantially lower than the Columbian prices. In fact, some of them were as much as 25 per cent or 30 per cent lower.

Q. You mean prices for the finished product?

A. Yes.

Q. To the patrons of the company?

A. To the customers, yes.

Q. Go ahead.

A. And that we were in a period where we ourselves were going to have to reduce our sale prices even further than we had already reduced them on or about October 1st, and in addition to that we would have to effect material economies in manufacture.

That a very serious condition had arisen in the factory, and I complained rather bitterly about it, I guess, in that all of this unrest that was being caused in the factory was directly affecting our own costs. Spoiled work during the month of July had been increased some \$1,500 over normal, and during the month of August, 1934, had been increased some \$2,500 over normal, and during September, 1934, about \$3,500 over normal, and during the month of October it had risen to the huge proportion of \$5,000 for that month over normal.

And that if that condition continued it was perfectly obvious that the factory could not continue to operate because at the rate of \$5,000 a month, or with the possibility of even a greater loss over normal than that, it would represent an additional cost of over \$60,000 a year. And I attributed it to the unrest that was caused in the factory due to solicitation for dues and the intimidation and the coercion that was going on, and all of the squabbling and scrapping that was being pursued throughout the factory, all of which had an effect on the mental attitude of the workers in the factory.

Q. This is what you said at this meeting?

A. As nearly as I can recollect, that is what I said.

Q. Go ahead.

A. Then, I informed Mr. Taylor, as well as the members of the scale committee, that those were only my viewpoints on the subject, and I would be glad to have Mr. Gorby, if he was in the office, come in and give his viewpoint thereon.

Q. Mr. Gorby, Sr.?

A. I beg pardon, Mr. Gorby, Jr.

Q. Proceed.

A. And I talked to Mr. Gorby and after brief, very briefly

telling him the demands—oh, I won't call them demands, exactly—

Q. (By Trial Examiner Lyons.) State what you said as nearly as you can remember, then you won't have to call them anything.

A. All right, let us call them requests.

Q. Tell us what you said.

A. Briefly, what the requests were, and Mr. Gorby indicated his answers.

332 Q. (By Mr. Jaburek.) What did he say?

A. He said that we would not grant a closed shop, and we could not grant increased wages, at this time.

Q. Then, what, if anything, was said?

A. Then, Mr. Taylor said, "The union men have no demands, and you may also forget the matter of a check-off system and the disassociation."

Q. And all of this conversation was in the presence of all of the representatives of the union whom you mentioned—

A. It was.

Q. (Continuing) —a little while ago?

A. Yes.

Q. All right, go ahead.

A. That is substantially all that I remember of the meeting.

Q. Have you exhausted your memory on that point?

A. I think so.

Q. Was any mention made about an athletic association?

Trial Examiner Lyons: About what, please?

Mr. Jaburek: Athletic association.

The Witness: Yes, there was. Mr. Taylor asked us if we would consider—can that be stricken out?

Trial Examiner Lyons: Yes. Do you want to withdraw what you said?

The Witness: All right.

Trial Examiner Lyons: You mean the beginning of 333 your answer?

The Witness: Yes.

Trial Examiner Lyons: All right.

The Witness: Mr. Taylor asked if we considered the Athletic Association for bargaining purposes, and we answered "No".

Q. (By Mr. Jaburek.) What is this Employes' Athletic Association?

A. The Athletic Association was an organization of em-

ployees for the purpose of pursuing certain athletic activities.

Q. Do you know—

A. Baseball, hard and soft ball, rather, and basket ball, and some social entertainment.

Q. Do you know who its officers were at that time?

A. Its president was Ray Glover.

Q. Was Cox an officer of that association?

A. Yes, he was an officer.

Q. Do you know what office he held?

A. No, I don't remember.

Trial Examiner Lyons: Is the situation with regard to the athletic association in issue here?

Mr. Jaburek: No, not in issue at all, except I just want to show that was brought out at the meeting.

Trial Examiner Lyons: He already stated he was asked if they did consider the Athletic Association for bargaining purposes—as a body for bargaining purposes, and the company said "No".

Mr. Jaburek: The company said "No".

Trial Examiner Lyons: So that seemed to end it unless it is going to be brought up in some other way.

Mr. Jaburek: I did want to bring out also that Cox was an officer of it.

Trial Examiner Lyons: Well, all right.

Q. (By Mr. Jaburek.) You do not know what office he held?

A. I do not know what office he held.

Trial Examiner Lyons: I want to hear as much about it as anybody thinks is material, but I do not want to get in any more than we have to.

Mr. Jaburek: That is all I am going to say on that point.

Q. (By Mr. Jaburek.) Did anything further take place at this meeting that you recall, Mr. Grabbe?

A. No, nothing that I recall. Furthermore, I left about a half a minute or so before the end of the meeting.

Q. Did the union representatives have a copy of the July 14, 1934 agreement with them?

A. I don't remember.

Q. None of its terms were discussed?

A. No.

Q. Now, showing you respondent's exhibit 1 for identification.

(The exhibit was passed to the witness.)

Q. Will you state whether or not the company received that document?

A. The company did.

Q. From whom?

A. Mr. Heuer.

Mr. Jaburek: I think you saw this before, Mr. Nicoson. (The document was passed to Mr. Nicoson.)

Mr. Nicoson: No objection.

Q. (By Mr. Jaburek.) When you received this document from the union did you make any reply either oral or in writing?

A. On January 4, at which that document was given to me by Mr. Heuer, at which meeting was present the scale committee and Gorby, Jr. Kelsey and I, and by the way this meeting was held January 4, 1935, I discussed in a very brief way most, if not all of the points in that agreement.

Mr. Nicoson: Now, we would like to have the witness confine himself to what was said. If the witness will confine himself to what was said and who made the statements it will save a little time.

Trial Examiner Lyons: Yes, I think the question of discussion is so important we ought to show just what the discussion consisted of.

Mr. Jaburek: Yes.

336 Q. (By Mr. Jaburek) State what was said as well as you can remember it, Mr. Grabbe.

A. Let me have that proposal.

Q. We are talking now of the meeting on January 4, 1935, between the company officials and the scale committee.

(The exhibit was passed to the witness.)

A. At that meeting there was practically no discussion, and all that I remember saying is that inasmuch as this is my first opportunity to have looked at their proposal, that I would give it consideration and let them know later what I thought about it.

Q. And did you on or about January 1, 1935, receive another communication from any one representing the union?

A. Yes. On January 1, I received a letter from the union in which they requested to meet with the company in order to discuss three things, I think, unrest and its alleviation, the matter of production losses, and a partial wage increase.

Mr. Jaburek: Mark this respondent's exhibit No. 13, for identification, please.

(The document referred to was marked respondent's exhibit 13 for identification.)

Q. (By Mr. Jaburek) I show you respondent's exhibit No. 13 for identification and ask you if that is the letter to which you have just testified?

(The exhibit was passed to the witness.)

337 A. It is.

Q. Now, calling your attention to the meeting of the scale committee on January 4, 1935, have you stated all that you remember about that meeting?

A. I think I have.

Q. For the purpose of refreshing your memory, was anything said about the scale committee not giving members of the union full information on what was going on?

A. Yes, that is true, that came up at the meeting.

Q. That is in substance what you said?

A. I beg pardon?

Q. That is the substance of what you said at this January 4, 1935 meeting?

A. Yes. I criticized them for not keeping their members fully informed of what was going on.

Q. Because of the complaints that had been made to you?

A. Exactly.

Q. Now, calling your attention to petitioner's exhibit No. 1, being the letter of January 21, 1935, that is a letter that was sent to all of the factory employees?

A. It was.

Q. And it was, or is an answer to the proposal made to the company on January 4, 1935, which is respondent's exhibit No. 1 for identification, is that correct?

A. Yes.

338 Q. And what is the next communication that you received from the union, if you know?

A. On or about February 5, I received a communication from the union requesting that their proposal—that is, February 5, 1935, requesting that their proposal of January be taken to arbitration in accordance with the provision in the July 14, 1934 Indianapolis agreement.

Q. When you say in accordance with a provision, you are quoting from the letter now?

A. Let me see the letter.

Mr. Jaburek: Mark this respondent's exhibit 14 for identification.

(The letter referred to was marked respondent's exhibit 14 for identification.)

Q. (By Mr. Jaburek) I show you respondent's exhibit 14 for identification.

(The letter was passed to the witness.)

A. Yes.

Mr. Nicoson: No objection.

Q. (By Mr. Jaburek) Now, what was the next step that followed?

A. On February 7 there was a meeting with the scale committee, at which were present all of the members of the scale committee, I think, and Gorby, Jr., Kelsey and I.

Q. State what happened.

339 A. At that meeting a few grievances were discussed.

Q. Do you recall what they were?

A. I recall Mr. Cox stating that just a few employes in the factory thought they had two hours' pay coming because, on a certain day, our power house, or, rather, one engine in the power house had broken down, and because of that we were not able to furnish power—

Mr. Nicoson: Is this all what Cox was saying all of this time? Cox making this statement?

Q. (By Trial Examiner Lyons) What counsel wants to know, Mr. Witness, is whether you are reciting something that was said at that meeting.

The Witness: Would you please read the fore part of my answer?

(The answer referred to was read by the reporter as follows:

"A. I recall Mr. Cox stating that just a few employes in the factory thought they had two hours' pay coming—")

The Witness: The last few words—"Mr. Cox stating a few employes thought they had two hours' pay coming— strike out the rest of my reply, and say, because of the power house shut down.

Q. (By Mr. Nicoson) Is that what you said, Mr. Witness?

A. No, that is what Mr. Cox said, not I.

Mr. Nicoson: Thank you.

340 Q. (By Mr. Jaburek) Go ahead; was anything else said at this meeting?

A. Yes. Then I said that, referring to the meeting with Dr. Beckner in Indianapolis on July 14, 1934, and with specific reference to what Dr. Beckner had told all of us at that

meeting regarding the matter of holding the company responsible for machinery break-down, I said that I could not see where the employes had any claim for two hours pay in accordance with the Indianapolis agreement.

Q. And this break down had been caused—strike that. This break down was a break down of machinery, was it?

A. Oh, yes, it was.

Q. Do you know how many employes Mr. Cox claimed wanted pay for this two hours' time?

A. Just a few.

Q. Was it less than a dozen?

A. Yes.

Q. And now calling your attention again to the proposals of January 4, 1935, and the request for an arbitration; did you discuss that matter with a committee at this meeting?

A. I asked the committee if they wanted to discuss their letter of February 5, in which they requested that their January 4 proposal be taken to arbitration, and Mr. Heuer forbade them to discuss the matter as he said he was chairman of that committee and would not permit any discussion on it. That is, on the union's part.

But I prevailed upon them to stay, and I explained to them that their proposal of January 4th had nothing to do with the Indianapolis agreement, and with specific reference to the arbitration clause that only those matters that arose out of the agreement would be subject to arbitration.

Q. And these proposals did not arise out of the contract?

A. No.

Mr. Nicoson: To which we object for the reason that it calls for a conclusion of the witness.

Trial Examiner Lyons: The last question, was that intended—

Mr. Jaburek: It was a question of mine.

The Witness: Well, rephrase your question and I will answer.

Trial Examiner Lyons: Read the question and answer.

(The question and answer were read as above recorded.)

Trial Examiner Lyons: I think that question and answer may be stricken out. The witness' conclusion is uninteresting.

The Witness: May I interrupt a minute?

Mr. Jaburek: Yes.

The Witness: Pardon me, may I interrupt a minute?

Trial Examiner Lyons: I am afraid not.
342 The Witness: All right.

Trial Examiner Lyons: Counsel is in charge of the examination.

Q. (By Mr. Jaburek) You have read all of the agreement of July 14, 1934, have you not?

A. Yes; I have.

Q. A number of times?

A. A number of times.

Q. And you have read these proposals of January 4, 1935?

A. Yes.

Q. And are well acquainted with both documents?

A. Reasonably well, yes.

Q. Have you an opinion as to whether or not the proposals do arise out of that agreement?

A. I have an opinion on that, yes.

Q. What is that?

A. And that is that their proposal of January 4th does not come, or arise out of the Indianapolis agreement.

Q. I show you petitioner's exhibit 10, being a letter addressed to Miss Lois Conder, corresponding secretary of the union, signed by you as vice-president and general manager. That is the letter which you sent to the union?

(The exhibit was passed to the witness.)

A. Yes, it is.

Q. In answer to its proposals?

343 A. Yes.

Q. And also sent to all employes, the letter of February 8, to all factory employes, being petitioner's exhibit No. 3?

(The exhibit was passed to the witness.)

A. Yes.

Q. When was your next communication with, or from the union, or the scale committee, if you recall?

A. I believe on or about February 17th.

Mr. Nicoson: I think you will find it is February 19. If the Examiner please, we find by an examination of the exhibits that one paper has been exhibited twice, and it appears once in the record as petitioner's exhibit 11 and once in the record as petitioner's exhibit 3.

Trial Examiner Lyons: Copy of the same instrument?

Mr. Nicoson: The same instrument.

Trial Examiner Lyons: Then, withdraw either of them.

Mr. Nicoson: We would ask permission to withdraw exhibit 11.

Mr. Jaburek: Well, I made reference to it.

Trial Examiner Lyons: Withdraw the one to which no reference was made.

Mr. Nicoson: Then, I will withdraw exhibit 3.

Trial Examiner Lyons: If you think you referred to both of them, you had better leave both of them in.

Mr. Nicoson: Let us leave them in, it does not make 344 any difference. We will withdraw the motion to strike out.

Trial Examiner Lyons: All right.

Q. (By Mr. Jaburek) State whether or not you received a communication from the union on or about February 9, 1935?

A. Yes, we did.

Mr. Jaburek: Mark this respondent's exhibit No. 15 for identification.

(The paper referred to was marked respondent's exhibit 15 for identification.)

Q. (By Mr. Jaburek) I show you respondent's exhibit No. 15 for identification, being a letter dated February 9, 1935, and signed by Lois Conder as corresponding secretary. That is the communication you referred to.

(The exhibit was passed to the witness.)

A. Yes.

(The exhibit was passed to Mr. Nicoson.)

Mr. Nicoson: No objection.

Q. (By Mr. Jaburek) And after that it was that you sent this general letter of February 19 to employes, which is petitioner's exhibit No. 13?

A. Yes, that was sent afterwards.

Q. Did you also reply directly to the union on the same subject?

A. A reply was made direct to the scale committee of the union.

345 Q. I show you petitioner's exhibit No. 12 and ask you if that is the communication you referred to?

(The exhibit was passed to the witness.)

A. Yes, sir.

Q. And to whom is it addressed?

A. Miss Lois Conder, corresponding secretary Enameling and Stamping Mill Employes Union No. 19694, 610 North 14th Street, Terre Haute, Indiana.

Q. So that it was not sent to the scale committee but to the corresponding secretary?

A. Yes, it was.

Q. Do you know whether or not there was a meeting with the scale committee on or about February 22, 1935?

A. There was.

Q. You were not present at this meeting?

A. I was not.

Q. When was the next meeting of the scale committee at which you were present?

A. On or about March 5, 1935.

Q. Who was present at this meeting?

A. The scale committee, Gorby, Jr., Kelsey and I.

Q. And by scale committee you mean the seven or eight persons whose names you have repeated here several times?

A. I do.

Q. Now, just what was said at this meeting, and who said it?

346 A. At this meeting there was discussed the subject of the company's mailing out letters. Mrs. Peyton said that she did not like the idea of the company sending out such letters. She could not see why the company did it.

Mr. Heuer said too, that it was unnecessary to send out letters, to which I replied that a number of people in the factory who were constantly asking me to keep them informed of such important matters, that the scale committee did not inform them, and that when they did receive information that it was not complete information that was being given them by the scale committee.

That further I stated inasmuch as these matters were matters of principle and involved both union members, and non-union members, as well as foremen and superintendents, that it was my opinion that all should be informed alike. That I did not see anything unfair about it.

Mrs. Peyton then suggested that perhaps it could be handled in another way, and I replied that I would be very willing to hereafter, when I thought it was necessary to send a letter out to all employes, hold a meeting with the scale committee, and at that meeting read to them my proposed reply. And that if there were any statements in that proposed reply to which they objected, that they would have the opportunity of objecting thereto, and giving their reasons for the

objections, and that wherever possible I would modify 347 the reply to suit their pleasure in the matter.

As I remember it, the committee were satisfied with that because not only Mrs. Peyton but Mr. Cox and Mr. Hener stated that that was all right.

Now, then, Mrs. Peyton seemed to have the impression that in some former mailing, I do not remember which one it was, in using the words "scale committee" that it had been my intention deliberately to slur the scale committee. And I told Mrs. Peyton that that, of course, was not my intention, and that where I had used the words "scale committee" I naturally meant the union, or the members of the union and not the individual make-up of the scale committee.

Mrs. Peyton said that some of the employes had interpreted my statement as reflecting on the scale committee. To that remark I replied in the same fashion. As the result of this discussion I stated that I would be glad to post a bulletin on the board, or do whatever else the scale committee wished to insure all of the employes that I did not mean the scale committee specifically.

Q. Such a letter was posted?

A. Yes, such a letter was posted. It was prepared, and then I believe, was taken up with the scale committee and they recommended one or two changes therein, which I made. Then, the letter was posted after that meeting.

Q. Now, was anything further said at this meeting of 348 March 5, 1935, that you recall?

A. No, not that I recall.

Q. For the purpose of refreshing your memory again, didn't the committee bring up this matter of the two-hours pay once more?

A. Yes, they did.

Q. State what was said about it.

A. Mr. Brown brought it up. He said he thought that the employes ought to have two hours' pay in accordance with the Indianapolis agreement.

Q. What did you say?

A. I repeated much what had happened in Indianapolis, when the provision in their own agreement had come up for discussion, and I am now referring to that provision in their agreement that has reference to the compensation for time lost because of machinery break down. And specifically what Dr. Beckner had said on it, and that was to the effect that

was an unfair and unjust provision, and should not be in the agreement.

Q. Now, you have covered that meeting as you recall it?

A. Yes, I think I have.

Q. No other complaint or grievance presented?

A. Not that I recall, no.

Q. Now, calling your attention to March 11, 1935, was there another meeting with the scale committee on that day?

349 A. Yes. On March 11th there was a meeting at which there was present Mr. T. M. Taylor, the members of the scale committee, Gorby, Jr., Kelsey and I.

Q. What was discussed at this meeting?

A. The company's answer to the union's proposal of January 4th.

Q. Tell what was stated and by whom?

A. Mr. Taylor conducted the discussion. He asked if that was, referring to the company's bulletin of about January 22, in which there was printed the union's proposal item by item, and the company's answer thereto item by item, he asked if that was the company's last word on it, and I informed Mr. Taylor that the answers appearing therein were clear. So he said, "Well" he said, "if that is the last word, there is no need to have a meeting on it." And I prevailed upon Mr. Taylor and the group to remain, inasmuch as we had already set the time aside to discuss the matter, to discuss it. And Mr. Taylor took it up point by point, and I replied to each point in accordance with the reply that the company had printed.

Mr. Nicoson: Now, we move to strike out the reply "in accordance with what the company had printed" and let the witness testify as to what he said.

The Witness: I read the company's reply point by point.

Mr. Nicoson: That is all right, then, you can say that.

Trial Examiner Lyons: Do you still want the other 350 stricken out?

Mr. Nicoson: Yes, sure.

Trial Examiner Lyons: All right, it may be stricken out.

Q. (By Mr. Jaburek) Was mention made about the proposal to lay off suspended members of the union?

A. That subject came up again and again.

Q. At this meeting?

A. At this meeting.

Q. State what was said and by whom, regarding it.

A. Mrs. Peyton wanted to know why we could not agree to lay off members suspended from the union, and Mr. Cox asked the same question.

Mr. Heurer asked the same question and Mr. Redinger, who, at that time was a member of the scale committee, did not ask that question. Mr. Brown, the president, asked the same question.

My answer to each one of those questions was the same. I replied that the company considered that that was union business, and not company business, and that the company did not have anything to do with the union. And that the company would not discharge any man or woman who had been suspended by the union. That if the union wanted to suspend members, that was its business but not ours.

Q. Now, you have covered that meeting?

351 A. No, I have not.

Q. Proceed.

A. I again went into the subject of spoiled work losses-- strike that out, let me restate it.

I said that the spoiled work losses were still increasing, and that our costs were increasing. That the union was causing trouble and unrest in the factory, and that for our mutual good, inasmuch as our welfare was tied up one with the other, that such activities during factory hours would have to be cut out.

Upon the conclusion of the meeting Mr. Taylor stated that he would call a special meeting of the union, and at that meeting do his very best in order to convey to the membership what I had told him at this March 11th meeting.

Q. What do you mean by spoiled work losses?

A. Spoiled work losses is rather a general term. With us it means any material that has been spoiled due to faulty workmanship, or due to the materials themselves. An example of the former would be bad dipping, bad beating.

Q. Is that the same thing you referred to when you talked about production losses of \$5,000 in one month?

A. When I spoke of those I meant distinctly those that were due to poor workmanship, and not including therein losses due to material, poor material.

Q. That is, when you refer to these figures of \$5,000, 352 \$3,500, and \$1,500 a little while back in your testimony?

A. Exactly.

Q. How much of a turn-over had there been in your plant during the year from about March, 1934 to March, 1935?

A. Negligible.

Q. So that approximately the same persons were in your employ prior to July, 1934, as were in your employ in July, August, September and October—

A. Yes.

Q. (Continuing) —when these great losses occurred?

A. Yes.

Q. And the same persons who were in your employ as of March 1, 1935?

A. Yes.

Q. And then I suppose the next thing was the receipt from the union of this exhibit No. 2, being the letter of March 17, 1935?

(The exhibit was passed to the witness.)

A. It is.

Q. That is petitioner's exhibit No. 2?

A. Yes.

Q. And you also received another copy of that resolution from Mr. Cowdrill of the Indianapolis Regional Labor Board?

A. The company did.

Q. When I say "you", I mean the company.

353 A. Yes.

Mr. Jaburek: Will you excuse us for just a moment, Mr. Examiner.

Trial Examiner Lyons: Yes. If we are going to stay longer hours, we might take a five minute recess.

Mr. Nicoson: Just before you do that, I want to speak to counsel, if you please.

Trial Examiner Lyons: Off the record.

(There was a discussion off the record.)

Q. (By Mr. Jaburek) Now, Mr. Grabbe, you heard the testimony about a Mr. Mythen, a federal conciliator, earlier in the hearing?

A. I did.

Q. Will you state whether or not Mr. Mythen called upon you at any time?

A. He did.

Q. What day was it?

A. Saturday morning, March 23rd.

Q. 1935?

A. 1935.

Q. And that is the date on the midnight of which the strike started?

A. Yes, sir.

Q. So this was before there was any strike. Will you state what Mr. Mythen said to you, if anything, and what 354 you said to him?

Trial Examiner Lyons: Well, now, if it is an occasion on which Mr. Mythen was supposed to have been sent by the union, I will be interested; if it was not—

Mr. Jaburek: There is testimony in there that they sent Mythen over there.

Trial Examiner Lyons: On this date?

Mr. Nicoson: Not on this date.

Trial Examiner Lyons: I know there was some talk about this conciliator, but I thought all of those things were after the strike had commenced.

Mr. Jaburek: No. This was just on the last day of work before the strike.

Mr. Nicoson: Our evidence was, if you please, that Mr. Mythen, the visit of which our evidence spoke, was on or about the 24th of April, 1935. Now, he deals with March 23rd. That is on the day the strike was declared.

The Witness: Counsel is right, I am wrong, in that he was there on Saturday morning the 17th, the week before.

Q. (By Trial Examiner Lyons) The week before—

A. Before the strike.

Q. Counsel for the petitioner says it was in April that he was there, now you say it was March the 17th.

A. Yes.

Trial Examiner Lyons: Instead of March 23, so we 355 have three different dates now.

Of course, this is admissible if it can be shown that the union had something to do with it, subject to the same limitations, of similar evidence taken when presented by the petitioner. So between now and tomorrow morning, perhaps you can make sure as to what the petitioner introduced about Mr. Mythen. And if that coincides with what you are about to produce, we will admit it.

There is no use going into it and excluding it later when we can find out about it. Unless you have some other way of showing the union sent him over, anything you may have said to him, or he to you is of no consequence unless connected with the union.

Mr. Jaburek: The only question is the date. There is testimony that the union instructed him to bring about a settlement if he could, there is such testimony.

Trial Examiner Lyons: The question is when did that—when did they tell him that. If they did not tell him that

until after this date in March, then it is not admissible. Independent efforts on his part, however commendable they might be would not bind this union unless they sent him.

Mr. Jaburek: Here we are trying to give them something and now they won't take advantage of it. It is in Heuer's testimony, after the introduction of exhibit number 13, a 356 little after that, just before exhibit 14 if you can find it from there.

Trial Examiner Lyons: I do not find it in my notes.

Mr. Jaburek: Judge Hilleary says according to his notes the testimony was that that was in April.

Trial Examiner Lyons: Then, unless you have some other way of connecting it up, we will have to exclude it, because what the labor department agent may have said to your company is obviously unimportant.

Mr. Jaburek: I will withdraw that question at this time and introduce it a little later on.

Trial Examiner Lyons: It is now five o'clock and in accordance with our recent understanding, we will adjourn until 9:00 o'clock tomorrow morning.

(Whereupon at 5:00 o'clock p. m., December 10, 1935, the hearing in the above-entitled matter was adjourned to December 11, 1935, at 9:00 o'clock a. m.)

357-359 * * (Cover and index.) * *

360 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

* * * (Caption—XI-C-7) * *

Federal Court Room,
Post Office Building,
Terre Haute, Indiana.
Wednesday, December 11, 1935.

The hearing was resumed pursuant to adjournment at 9:00 o'clock a. m.

Before:

Daniel M. Lyons, Trial Examiner.

Appearances:

Melvin C. Smith, Attorney, on behalf of the National Labor Relations Board.

Maurice J. Nicoson, on behalf of Enameling & Stamping Mills Employees Union No. 19694.

Otto A. Jaburek, 35 East Wacker Drive, Chicago,
Illinois,
Josiah T. Walker, Terre Haute, Indiana,
Louis R. Hilleary, Terre Haute, Indiana, and
Wilson N. Cox, Terre Haute, Indiana,
On behalf of Columbian Enameling and Stamping
Company, Respondent.

PROCEEDINGS.

Trial Examiner Lyons: The hearing will come to order.
Counsel may proceed.

Mr. Jaburek: Before we proceed, Mr. Nicoson, in checking
over your exhibits, I notice you have not got a name signed to
this one of September 20th.

Would you mind inserting the name in there?

Mr. Nicoson: Certainly not.

Mr. Jaburek: This is the original. The other one is signed.
This is the September 20th letter.

Mr. Nicoson: I see,—This one?

Mr. Jaburek: Yes.

Mr. Nicoson: How about the one of October 11th?

Mr. Jaburek: You have that signed.

Mr. Nicoson: All right.

Mr. Jaburek: Take the stand, Mr. Grabbe.

WERNER H. GRABBE, the witness on the stand at the time
of adjournment, resumed the stand and testified further as
follows:

Direct Examination (Continued).

Q. (By Mr. Jaburek) On what date did the strike start?

A. At midnight, March 23rd, 1935.

Q. When did the plant quit operating?

A. The plant, except for the power house and the office,
quit operating at that time—on that date, at that time.

362 Q. When did you resume operations?

A. July 23rd, 1935.

Q. Now, will you in a brief way, Mr. Grabbe, describe what
occurred at the plant during the period between March 23rd
and July 23rd, 1935 having special reference to picketing and
to acts that you yourself observed in and about the plant?

Trial Examiner Lyons: Now, before that question is answered, will counsel step this way please.

Mr. Jaburek: I will not go into any great detail on that, but I want something in the record on that, in that connection.

(Discussion off the record.)

Trial Examiner Lyons: Proceed.

Mr. Jaburek: Will you read the question please, Mr. Reporter.

(The question referred to was read by the reporter as above recorded.)

Q. (By Mr. Jaburek) (Continuing) I have particularly in mind, Mr. Grabbe, that I would like to know the number of hours pickets were there, and about how many pickets there were, and if there were any unusual acts at any time.

I wish it to be merely brief.

A. I see. I will try to be. Picketing commenced at midnight March 23rd, 1935, and was pursued 24 hours a day until martial law was declared, July 22nd, 1935.

363 There were daily from 15 to 125 to 150 pickets on the line.

Q. Calling your attention to on or about June the 15th, 1935: Did anything out of the ordinary occur on that night, or on the morning of June the 16th, 1935?

Mr. Nicoson: Petitioner and complainant will object to that question unless counsel shows that the petitioner had anything to do with what happened on that date.

Trial Examiner Lyons: Well, I should expect—

Mr. Jaburek: I suggest that we hear first what the witness has to say.

Trial Examiner Lyons: —that there will be some showing of that sort; but I do not know what it is that the witness is going to say.

Mr. Nicoson: I would like to have—

Trial Examiner Lyons: I expect counsel to state, first. I do not want to have something put into the record which may be sensational,—I do not know whether there is anything sensational in this case, or not; but if there is, I would hate to see anything sensational go in under a promise to be connected up, and then have a failure, an unintentional failure, to make the connection.

Mr. Jaburek: I think—

Trial Examiner Lyons: I will ask counsel to be careful, and try to put it in the other order if he can, although 364 I know that is difficult.

Mr. Jaburek: I think that we will be able to connect it up, if the Examiner please.

Trial Examiner Lyons: Proceed.

Mr. Jaburek: You may answer the question.

The Witness: What is the question?

Mr. Jaburek: Read the question please, Mr. Reporter.

(The question referred to was read by the reporter as above recorded.)

A. There was a serious riot in the plant involving the destruction of over \$25,000 worth of property.

Q. (By Mr. Jaburek) Now,—

Mr. Nicoson: That is objected to, and I move that the answer be stricken out, for the reason that it is a conclusion of the witness.

Mr. Jaburek: Let me ask another question.

Trial Examiner Lyons: Yes, I think that should be stricken as being too general.

I think that perhaps the witness is trying to condense it.

The Witness: Yes, I am.

Trial Examiner Lyons: But he made it too general.

Mr. Jaburek: Let me ask another question.

Q. (By Mr. Jaburek) Will you state what occurred on the evening of June the 15th, 1935, having in mind particularly whether or not there was any picketing, and if so, will you please describe it, mentioning the number of pickets whom you observed.

A. There were anywhere from 3000 to 5000 people around the plant Saturday night.

Q. Did you—

Mr. Nicoson: I move that the answer be stricken out for the reason that it is not responsive to the question.

Counsel asked him how many pickets there were and the witness replies that there were so many people, or persons.

Now, there is no showing whether those persons were pickets, or who they were, or that they have anything to do with this case at all, so I move that the answer be stricken.

Trial Examiner Lyons: I think that the answer is irresponsible to the question. It does not seem possible that three thousand to five thousand people would be pickets.

Mr. Jaburek: Well, let me ask my next question, if the Examiner please, and I think that it will show the connection.

Q. (By Mr. Jaburek) In this crowd did you observe any of the striking employees?

Mr. Nicoson: Now, just a moment. For the sake of the record here, we are going to object to that for the reason that there is no evidence before the Board that there was a crowd.

Trial Examiner Lyons: Well, in view of my ruling—

366 Mr. Nicoson: I think—

Trial Examiner Lyons: —by which I intended to strike out the answer with reference to the three thousand to five thousand people, this next question is directed, now, to something that is not in evidence.

You say "in this crowd." Now, you can ask him if he saw any number of striking employees outside of the plant, and if he should answer that in affirmative, then you may ask him under what circumstances he saw them, and where they were, and whether there were any other persons present.

Mr. Jaburek: I did not hear the Examiner say that he was striking out the last answer.

Trial Examiner Lyons: Perhaps I did not make it as clear as I should have, but I intended it to be stricken.

Q. (By Mr. Jaburek) Calling your attention to the early evening of June the 15th, 1935, Mr. Grabbe, was there any picketing on that evening at that time?

A. Yes, there was.

Q. Approximately how many former employees were engaged in picketing at that time and place?

A. I don't know.

Q. What is your best recollection?

A. I didn't see more than fifteen or twenty.

Q. And where were they with reference to the office building of the company?

367 A. There were a good many of them in front of the office building.

Q. And what else, if anything, did you observe in the early evening of that day?

A. A large crowd.

Q. Of approximately how many persons?

A. Three thousand to five thousand?

Q. And with reference to your plant, where was this crowd?

A. Principally in front of the office.

Q. And for how great a distance if any back from the office was that crowd gathered?

A. Perhaps a block or two.

Q. Did anything out of the ordinary occur on that night, or during the early hours of the following morning?

Mr. Nicoson: To which we object, Mr. Examiner, for the reason that he has shown no connection.

He has gone through all of these preliminary matters, and

he has not laid any ground work to connect this up with the union at all.

Trial Examiner Lyons: Perhaps we had better have an informal discussion of this off the record.

(Discussion off the record.)

Mr. Jaburek: Let the record show the following offer of proof, if the Examiner please?

We offer to prove by this witness that during the early 368 evening hours of June the 15th, 1935, there were stationed in front of and near the office building of Respondent's plant, approximately 15 strikers engaged in picketing; that during the course of the evening large crowds gathered in the vicinity of said office building so that by approximately ten or eleven o'clock p. m. said crowd had swelled to three thousand to five thousand persons; that in said crowd were certain of said striking pickets; that some time during the early morning hours of June the 16th, 1935, the office building of respondent's plant was raided and wrecked; that portions of the factory proper were also raided, and damage done therein; that revolver and shotgun shots were fired at and against the furniture in said office building, and at and against the walls of said office building; that the filing cabinets were opened, and records strewn around said office, and destroyed; that office furniture and equipment was destroyed and wrecked; that approximately three thousand lights of glass were broken in said office building and in said factory; that on the afternoon of June the 15th, 1935, eight special police were moved into said plant; that said crowd began to gather shortly after said special police had arrived; that on the afternoon of said date, June the 15th, 1935, fifteen Vigo County residents were sworn in as Special City Police, and eight of them were the eight who were moved into the plant on that date.

369 Mr. Nicoson: I believe our objection to this is already in the record. At this time we will renew our objection.

Trial Examiner Lyons: I shall exclude the evidence and refuse the offer; and the rights of respondent are saved.

Mr. Jaburek: Thank you.

Trial Examiner Lyons: Counsel will proceed.

Mr. Jaburek: I will try to proceed carefully, and if I make an error, it will not be intentional.

Mr. Nicoson: And from time to time we will state our objection, for the benefit of the record.

Trial Examiner Lyons: Yes.

Q. (By Mr. Jaburek): Now, Mr. Grabbe, calling your attention to July 19th, 1935 at about 3 o'clock in the morning, 3 o'clock a. m., did anything occur at or about that hour with reference to the plant?

A. I went into the plant—

Trial Examiner Lyons: No, the question is: Did anything occur? You had better answer that yes or no, to begin with.

A. Yes.

Q. (By Mr. Jaburek): What was it?

A. I went into the plant.

Q. Who accompanied you.

A. Men.

Q. Approximately how many men?

A. About 40.

370 Q. Now, calling your attention to the hour of about 7 o'clock a. m. of that day, were there any—was picketing going on at that time?

A. At what time?

Q. 7 o'clock a. m.

A. I don't know.

Q. Calling your attention to the hour of eight or nine o'clock p. m., will you state whether or not picketing was going on at that time?

A. Yes.

Q. How many persons, former employees, strikers, were engaged in picketing?

A. Several hundred.

Q. Did you see them?

A. Yes.

Q. Now,—

Mr. Nicoson: Now,—

Trial Examiner Lyons: This was at what hour?

Mr. Jaburek: Eight to nine o'clock p. m.

Trial Examiner Lyons: P. M.?

Mr. Jaburek: On the evening of July 19th, 1935—yes, sir.

Trial Examiner Lyons: Was counsel about to say something?

Mr. Nicoson: No.

371 Trial Examiner Lyons: I think that you had better interrogate your witness a little further on that. He said "Several hundred." Now, what does he mean by "several hundred"?

If all of the employees—former employees of the plant were out there, it would not make several hundred, as "several" is sometimes used.

Q. (By Mr. Jaburek): Well, Mr. Grabbe, when you say "several hundred", just what do you mean by "several hundred"?

A. Between two hundred and three hundred.

Q. Of strikers?

A. Yes, sir.

Q. Formerly employed by the company?

A. Yes, sir.

Q. Were they all men, or all women, or were they some of both?

A. Men and women?

Q. Did you see any other people besides those two hundred to three hundred strikes at or near the vicinity of the plant?

A. Yes, sir.

Q. Approximately how many?

A. 50 to 100.

Q. (By Trial Examiner Lyons): Fifty to one hundred persons?

A. Yes, sir.

372 Q. (By Mr. Jaburek): In addition to the strikers?

A. Yes, sir.

Q. At a later hour of the day, did any other persons gather at or near the plant?

A. Yes, sir.

Q. At about what hour?

A. The crowd continued to grow all during the day and night.

Q. And when did the crowd reach its peak?

A. Between the hours and nine and ten o'clock Friday night.

Q. How many were there at that hour?

A. Possibly three thousand or more.

Q. A moment ago you said, 50 to 100 other persons.

A. Yes.

Q. What did you mean by "50 to 100 other persons"?

A. Persons whom I did not identify as having worked for the company.

Q. And besides that there was a crowd of several thousand?

A. (No answer.)

Q. I wonder if you understand my question, Mr. Grabbe. I am trying to find out just what went on at the plant on that day. I am trying to establish first whether or not there were any of the striking employees picketing there.

A. Yes.

Q. And then I want to show, if it is true, that there were other persons there.

373 A. Oh.

Q. You stated that the hours—you stated that between the hours of 8 and 9 o'clock p. m. there were 50 persons.

A. Yes, sir.

Q. And then a little later you said that the crowd kept on growing during that day, and that by nine o'clock it aggregated several thousand.

Now, just how do you explain those statements?

Mr. Nicoson: I object to that, if the Examiner please, and move that counsel's statement be stricken from the record, for the reason that it consists of mere instructions to the witness, and counsel is putting words into the mouth of the witness, for him to testify to.

Mr. Jaburek: Oh, no.

Trial Examiner Lyons: Well, the statements of counsel are not evidence, in any event. I think no harm will be done—

Mr. Nicoson: Then we object to the tactics of counsel, sitting here and telling the witness what to say, and then going back and asking the witness if that is right.

Mr. Jaburek: The Examiner heard the witness.

Mr. Nicoson: It is improper for counsel to ask such leading questions.

Mr. Jaburek: The witness made both statements, which appear to be irreconcilable, and I am simply trying to get 374 at what he does mean.

Trial Examiner Lyons: Well, as against objection, I think that your method of doing it is strictly incorrect, and the statement ought to be stricken.

You can accomplish the same result by asking further questions, Mr. Jaburek, one at a time.

Mr. Jaburek: Very well.

Trial Examiner Lyons: And the witness will then explain it, I think.

Q. (By Mr. Jaburek): Calling your attention, Mr. Grabbe, to the hour of about 8 o'clock p. m. of July the 19th, 1935, will you state whether you observed any unusual condition about the plant of the company?

Trial Examiner Lyons: Is this the same date?

Mr. Jaburek: Yes.

Trial Examiner Lyons: To which you have already referred?

Mr. Jaburek: This is the same date upon which I have been interrogating the witness, and as to which his former answer was stricken.

Trial Examiner Lyons: No, the answer was allowed. That was not stricken. It was simply your method of calling his attention to what you were trying to bring out.

Now, the question which you have just asked is equally broad, and will not get us any farther advanced. But you may ask him some specific questions, as to how many persons, 375 or how many strikers were there at a certain hour, and how many persons not strikers were there at a certain hour; and follow up the history of the day in that way by question after question.

Q. (By Mr. Jaburek): Calling your attention, Mr. Grabbe, to July the 19th, 1935, at about the hour of 9 o'clock p. m., how many strikers, former employees of the company, did you observe picketing at or near the plant of the company at that hour?

A. At that time it was very dark and I didn't observe.

Q. How?

A. I didn't identify any individuals.

Q. At 6 o'clock p. m. of said date, approximately how many—or rather, state whether or not there were any former employees of the company engaged in picketing?

A. At 6 o'clock?

Q. Yes.

A. On the evening of the 19th?

Q. Yes.

A. Yes, sir, there were approximately somewhere between two hundred and three hundred.

Q. And at the hour of 9 o'clock p. m. of said day, how many other persons were there at or near the plant?

Trial Examiner Lyons: Well, now—

Mr. Nieson: That is objected to.

376 Trial Examiner Lyons: 9 p. m.!

Mr. Jaburek: Yes.

Trial Examiner Lyons: I believe it appears from the testimony now that at 9 o'clock, so far as he knew, there were not any striking employees there; and I have already indicated that I am not interested in what any crowd was doing, except at a time when there were pickets or striking employees present.

Q. (By Mr. Jaburek): When you testified a moment ago, Mr. Grabbe, that at 9 o'clock p. m. it was too dark to even see whether any of the strikers were there or not,—was that your statement?

Did you have in mind to make that statement, or do you wish to correct that statement?

A. No, sir, I do not wish to correct it.

Q. Calling your attention to July 20th, 1935, was there any picketing on that day by strikers formerly employed by the company?

Mr. Nicoson: That is objected to.

A. There was.

Mr. Nicoson: That is objected to, Mr. Examiner, unless it is made more specific as to what time.

Mr. Jaburek: My question—

Trial Examiner Lyons: Did you not mention that?

Mr. Nicoson: The question is too broad. It covers a 377 period of 24 hours.

Trial Examiner Lyons: If the question is answered "No", of course that would take care of the entire day, and we would not have to go any further; so perhaps he might answer the question, as to whether there was or was not any picketing on that day.

A. There was.

Trial Examiner Lyons: Now counsel can find out about the hour.

Q. (By Mr. Jaburek): At what hour of that day did you first observe the pickets?

A. What is the question again?

Q. At what hour of the day did you first observe the pickets, on that day?

A. About 7 or 8 o'clock in the morning.

Q. (My Mr. Nicoson): What is the answer please?

A. About 7 or 8 o'clock in the morning.

Q. And how many pickets did you observe on that day?

A. About 50 at that time.

Q. All striking employees?

A. Yes, sir.

Q. Former employees?

A. Yes, sir.

Q. And how long during that day were there striking former employees engaged in picketing?

378 A. It was continuous, until about midnight that night.

Q. And how many did you observe during the day?

Mr. Nicoson: That is objected to.

A. Two hundred to three hundred.

Trial Examiner Lyons: The last answer—

Mr. Nicoson (Continuing): Unless it is made more specific.

Trial Examiner Lyons: As to the last answer, the witness may be testifying from his own knowledge, and if he is of course the answer is not objectionable. But in view of his previous answer, where he said that at 9 o'clock on the previous day he was not able to identify any employees because it was dark,—now, I suppose it was just as dark on July 20th, and perhaps he could not identify them after 7 or 8 o'clock that night.

Mr. Jaburek: Well,—

Trial Examiner Lyons: He says that the picketing was continuous until midnight.

Mr. Jaburek: Well, would that not be a matter of cross-examination? I do not know what the condition was that he is able to testify to on this day.

Trial Examiner Lyons: That may be. But you are asking these very broad questions, and he is answering them in a very broad way. For example, he says that the picketing was continuous until midnight.

379 Now, we do not know whether he is talking about what he saw, or what he heard from others.

The Witness: I am talking about what I saw.

Trial Examiner Lyons: Well, that seems to clear it up, but you can clear it up further by further questions.

I am just suggesting the care with which the examination ought to be conducted.

Mr. Nicoson: Well,—

Trial Examiner Lyons: Did counsel have something to say?

Mr. Nicoson: We have stated an objection on the record. Are you overruling our objection?

Trial Examiner Lyons: Your objection was to what?

Mr. Nicoson: We objected because he was not specific as to the time.

Trial Examiner Lyons: What was the last question, Mr. Reporter.

(The question referred to was read by the reporter as above recorded.)

Trial Examiner Lyons: I think that question is objectionable, and ought to be excluded.

You may ask him as to the various hours.

Mr. Jaburek: Well, no, if the Examiner please, it seems to me that it is admissible, if he knows, during the day.

Trial Examiner Lyons: But the answer would not be informative.

380 Q. (By Mr. Jaburek): Calling your attention, Mr. Grabbe, to the hour of 6 o'clock of July the 20th, 1935, how many striking employees did you observe at that hour engaged in picketing at or near the plant?

A. Two hundred to three hundred.

Q. Did you observe any other persons besides strikers, at or near the plant at that hour?

A. Yes, sir.

Q. How many other persons?

A. Two thousand to three thousand.

Q. Calling your attention to approximately the hour of 9 o'clock p. m. of said day, did you observe any striking employees at or near the plant at that hour?

A. I did.

Q. Approximately how many?

A. Two hundred to three hundred.

Q. Did you observe any other persons at that hour—

A. Yes.

Q. —at or near the plant?

A. Yes, sir.

Q. Approximately how many such persons?

A. Probably six thousand to eight thousand.

Q. Now, calling your attention to the hour of 11 o'clock p. m. of said day, did you observe any striking employees engaged in picketing at that hour at or near the plant?

381 A. Yes, sir.

Q. Approximately how many?

A. The number was materially reduced.

Q. Approximately how many?

A. Possibly 50.

Q. And at that hour did you observe any other persons at or near the plant?

A. Yes, sir.

Q. Approximately how many other persons?

A. A few hundred.

Q. Now, calling your attention to Sunday, July 21st, 1935, at about the hour of 3 o'clock p. m.: Did you observe any striking employees—

A. Yes.

Q. (Continuing) —engaged in picketing, at or near the plant, at that time?

A. Yes.

Q. Approximately how many?

A. Two hundred to three hundred.

Q. And did you observe any other persons at or near the plant at that hour?

A. Yes, sir.

Q. Approximately how many?

A. Two thousand to three thousand.

Q. Now, Mr. Grabbe, calling your attention to the 382 hour of 7 o'clock p. m. on Sunday, July the 21st, 1935:

Did you observe any striking employees engaged in picketing at that hour, at or near the plant?

A. Yes, sir.

Q. Approximately how many?

A. Two hundred to three hundred.

Q. Now, at that hour were there any other persons that you observed at or near the plant?

A. Yes, sir.

Q. Approximately how many?

A. Possibly eight thousand.

Q. Now, calling your attention to Monday, July 22nd, 1935, at approximately the hour of 9 o'clock a. m.: Did you observe any striking employees engaged in picketing at or near the plant at that hour?

A. Yes.

Q. Approximately how many?

A. Two hundred to three hundred.

Q. Now, did you at that hour observe any other persons at or near the plant?

A. Yes.

Q. Approximately how many?

A. Two or three thousand.

Q. Now calling your attention to approximately the hour of 6 o'clock p. m. of Monday, July 22nd, 1935—

383 If the Examiner please, I have in mind that a moment ago I spoke of Monday, July the 21st, in my question a moment ago. If I did so, that was an error of speech. I mean to refer to Monday, July 22nd, 1935.

Trial Examiner Lyons: Whenever you referred to Monday, you referred to Monday, July 22nd, is that right?

Mr. Jaburek: Yes.

Trial Examiner Lyons: All right.

Q. (By Mr. Jaburek) Now, calling your attention to ap-

proximately the hour of 6 o'clock p. m. of Monday, July the 22nd, 1935: Did you observe any strikers engaged in picketing the plant of the company at that hour?

A. Yes.

Q. Approximately how many?

A. Two hundred to three hundred.

Q. And did you observe any other persons there at that same time?

A. Yes.

Q. Approximately how many?

A. About 6000.

Q. Now, on that same day, Monday, July the 22nd, 1935, did anything out of the ordinary occur, aside from this large crowd of strikers and other persons?

Mr. Nicoson: Just a moment. That question is objected to for the reason—

384 Mr. Jaburek: Let him answer the question yes or no, I suggest.

A. Yes.

Trial Examiner Lyons: At what hour was that, Mr. Jaburek; 6 o'clock?

Mr. Jaburek: No, Mr. Examiner; I asked him during the day, and he answered "Yes."

Now, I am going to try to fix the hour or hours.

Trial Examiner Lyons: All right.

Mr. Nicoson: Well, now, we are going to object to that question for the reason that it is too broad and general.

It does not show anything connected with this case. He asked him if anything happened on that day.

Trial Examiner Lyons: Well,—

Mr. Nicoson: There may have been a train wreck, or a revolution in Ethiopia or anything.

Trial Examiner Lyons: Well, for the present of course no harm is done. Just now we are trying to fix the hour.

Mr. Nicoson: Yes, but—

Trial Examiner Lyons: And I will permit—

Mr. Nicoson: Mr. Examiner, we do not know, when counsel asks these questions, what the answer is going to be.

Trial Examiner Lyons: No.

Mr. Nicoson: And if it is something that should be objected to, we want to object to it before it goes in.

385 Trial Examiner Lyons: Let us get the hour fixed.

Mr. Nicoson: I object to the answer.

Trial Examiner Lyons: Let us get the hour fixed, and then

I will ask counsel to make an offer of proof, as to what he is going to show.

Q. (By Mr. Jaburek) At about what hour of that day did this this, this unusual thing, occur?

A. About 11 o'clock Monday night.

Q. (By Trial Examiner Lyons) Monday night?

A. Yes, sir.

Q. Well, now—

A. You are now speaking of July the 22nd?

Q. July 22nd.

A. Yes.

Mr. Jaburek: Now I am going to ask the witness one further question.

Mr. Nicoson: We are going to renew our objection at this point, for the reason they have not shown any connection with this case, and for the further reason that it is immaterial and irrelevant.

Trial Examiner Lyons: Oh, I will hear it, simply as a preliminary question.

Mr. Nicoson: And note our exception.

Trial Examiner Lyons: Yes, certainly.

Q. (By Mr. Jaburek) At this time, on Monday July 386 the 22nd, 1935, at about the hour of 11 o'clock p. m., were there any strikers engaged in picketing?

A. Yes.

Q. Were there any other persons there at that hour aside from the strikers?

A. Yes.

Q. Approximately how many?

A. There were about fifteen thousand people in the crowd.

Q. Now, what was this unusual thing which you say occurred at that hour?

Trial Examiner Lyons: Just a moment. Do not answer that question yet, please.

Mr. Jaburek: Now, Mr. Examiner—

(Discussion off the record.)

Mr. Nicoson: I object to the question for the reason that it is immaterial and irrelevant, and there is no showing as to how many pickets were at the plant at this time, or that there was any connection between the pickets, and the others who were in that crowd of about fifteen thousand people, to which the witness has just testified; and for the further reason that it does not have anything to do with the case now before the Examiner.

Trial Examiner Lyons: Well, now, if you would ascertain

how many pickets were there, and where they were, and where the crowd was—

387 Mr. Jaburek: Well,—

Trial Examiner Lyons: —it might dispose of some of these objections.

Mr. Nicoson: Are you ruling on the question at this time, Mr. Examiner? We want to state our objection for the records, and we want to have it noted, if you are ruling on our objection adversely at this time.

Trial Examiner Lyons: Well, before ruling on the objection I would like to have counsel introduce certain facts which I have assumed were going to be introduced, namely, as to the number of pickets that were there—

Mr. Jaburek: That was already stated.

Trial Examiner Lyons: —And the further fact that—

Mr. Nicoson: No, he did not state how many.

Trial Examiner Lyons: —the further fact of the relative position of the pickets and the crowd.

Mr. Jaburek: He has already stated as to the number of both pickets and non-pickets.

Trial Examiner Lyons: At that hour?

Mr. Jaburek: At that hour.

Mr. Nicoson: I challenge that statement and refer to the record.

Mr. Smith: No, I do not think so.

Trial Examiner Lyons: I do not think it was at that hour; I think it was at an earlier hour. If you want to ask 388 that question again, however, you may.

Mr. Nicoson: We object.

Q. (By Mr. Jaburek) Mr. Grabbe, at this hour of 11 o'clock p. m. Monday, July the 22nd, 1935, approximately how many strikers were engaged in picketing at or near the plant of the company?

A. Two hundred to three hundred.

Q. And approximately how many other persons, other than strikers, were at the plant of the company or near it at that hour?

A. About fifteen thousand.

Q. With reference to the plant of the company, where were the two or three hundred strikers?

A. At the 19th Street gate, in front of the office; at the Ash Street gate; and at the railroad gate.

Q. How many were at the office?

A. By far the biggest part of them.

Mr. Nicoson: I object.

Q. (By Mr. Jaburek) Approximately.

Mr. Nicoson: Just a moment. That is objected to.

Trial Examiner Lyons: That does not help us.

Mr. Nicoson: Not a particle.

Trial Examiner Lyons: Tell us the number.

Q. (By Mr. Jaburek) Approximately how many?

A. A couple of hundred.

389 Q. And at the 19th Street gate?

A. About 25.

Q. And at what other gate did you mention?

A. The Ash Street gate.

Q. How many there?

A. About twenty five there.

Q. And the other?

A. (Continuing) And at the railroad gate, also about twenty five.

Q. Now, then, this crowd that you have described of approximately fifteen thousand people: Where was it stationed with reference to these several points which you have just mentioned?

A. The largest part of the crowd was in front of the office building on Beech Street.

Q. Now, by "the largest part of the crowd", how many do you mean?

A. Probably two thirds of them.

Q. Now, at 19th Street—

A. Several hundred.

Mr. Jaburek: Just a moment. I will withdraw the last question.

Q. (By Mr. Jaburek) How far is Beech street from the office?

A. The office is on Beech Street.

Q. And approximately how many feet back of the 390 curb line is the office building located?

A. About 20 feet.

Q. Approximately how many persons were gathered at 19th Street, aside from strikers?

A. About 500.

Q. And at the Ash Street gate?

A. About 500.

Q. And the railroad gate?

A. About the same number.

Q. Now, with reference to the strikers in front of the office, and the crowd in front of the office: Where were those two groups with reference to each other?

A. They were intermingling.

Q. And at the 19th Street entrance, what was the situation there as regards strikers and non-strikers?

A. Both were there.

Q. Pardon me?

A. There were both there.

Q. I mean, with reference to each other.

A. They were intermingling with each other in the crowd.

Q. And at the Ash Street Gate?

A. The same condition there.

Q. And at the railroad gate?

A. The same condition.

Q. Now, as to the unusual thing which you say occurred there at approximately 11 o'clock p. m. of this day : State first where it occurred.

Mr. Nicoson: I object to that, for the reason that it has not yet been shown that the actions of this crowd had anything to do with the picketing, or that the pickets were connected with this crowd in any way; and that what the crowd did if anything is immaterial and irrelevant to this proceeding.

Trial Examiner Lyons: Well, I believe that it does have an effect upon the transactions that took place, according to the complaint, on July the 22nd, 1935, relative to an attempt of the union to get in touch with respondent with respect to something pending between them; and I will admit it as a part of the circumstances surrounding the transactions described in Paragraph 6 of the complaint.

For that reason I will receive it subject to your objection.

Mr. Nicoson: Exception.

Trial Examiner Lyons: Your exception is noted.

Q. (By Mr. Jaburek) You may answer the question, Mr. Grabbe.

A. Will you repeat the question?

Mr. Jaburek: The reporter will read it.

(The question referred to was read by the reporter as above recorded.)

Q. (By Mr. Jaburek) (Continuing) Will you just state where this unusual thing occurred, first, and then state what it was.

A. It occurred first in the front part of the office building, and represented a throwing—

Mr. Nicoson: Now, just a moment. I would like to ask the witness a preliminary question at this time.

Mr. Jaburek: Well, suppose counsel allows me to conduct the direct examination of this witness.

Mr. Nicoson: I would like to ask the witness if he was present when this happened.

Mr. Jaburek: I suggest that counsel bring that out on cross examination, Mr. Examiner.

Mr. Nicoson: There has been as yet no showing that he was, and I would like to ask that preliminary question.

Trial Examiner Lyons: Well,—

Mr. Nicoson: I think that I have the right to ask the witness the question if he was present when this thing that he is about to testify to, is said to have happened.

Trial Examiner Lyons: Suppose I ask examining counsel to ask that question of the witness.

Mr. Nicoson: All right.

Trial Examiner Lyons: That will bring out the fact.

Q. (By Mr. Jaburek) Were you present at that time, Mr. Grabbe?

A. I was.

Q. Where were you stationed at that hour?

A. In the front of the main office on the first floor 393 when it started, and then on the second floor, and the third floor, while the throwing of rocks, spikes and bolts was being done by those outside of the plant.

Q. Approximately how many missiles were thrown if you know?

A. At least 200.

Mr. Nicoson: That is objected to.

Q. (By Mr. Jaburek) For how long—

Mr. Nicoson: Just a moment. I object, Mr. Examiner, for the reason that it is not shown that the missiles were thrown by anybody connected with this proceeding.

Trial Examiner Lyons: Well, that is the same objection that you have already made.

Mr. Nicoson: That is right.

Trial Examiner Lyons: To another question.

Mr. Nicoson: Yes.

Trial Examiner Lyons: But it be noted again.

Q. (By Mr. Jaburek) For how long a period of time did that continue, Mr. Grabbe?

Mr. Nicoson: The same objection.

Trial Examiner Lyons: The same ruling.

The Witness: What is the question again, please?

Mr. Jaburek: Read it.

(The question referred to was read by the reporter as above recorded.)

A. It started about 8 o'clock, and it continued until
394 about—shortly after 11 o'clock.

Q. (By Mr. Jaburek) Where, or in what way, if you
know—well, no, strike that out, please.

Did you see where any of those missiles landed, Mr. Grabbe?

A. Yes, sir.

Q. Where did they land?

A. Those went through the windows, landed in the office,
or on the floors above the office.

Q. What damage, if any, was occasioned by the throwing
of those missiles on that occasion?

Mr. Nicoson: That is objected to.

A. Not much—

Mr. Nicoson: To which we object, Mr. Examiner, for the
reason that it calls for the conclusion of the witness.

Trial Examiner Lyons: I do not think I am interested in
the amount of damage that was done. The direction in which
the missiles were thrown is of course important, but that has
already been established, that they landed inside of the plant,
and from that it might be inferred that they were thrown in
that direction. But the resulting damage of course is some-
thing that I am not interested in, and therefore I shall exclude
that.

Q. (By Mr. Jaburek) Mr. Grabbe, will you state whether
or not the militia arrived at the plant that evening?

395 A. It did.

Q. And how long did it continue there?

A. The militia arrived shortly after 11:15 o'clock Monday
night and stayed there for about two weeks.

Q. Do you know how many companies were at the plant?

A. About five companies came there.

Q. Consisting of approximately how many men?

Trial Examiner Lyons: Well, is that of any importance,
Mr. Jaburek?

A. Well, about 750 I guess.

Trial Examiner Lyons: Well, he has answered it, so let it
go.

Mr. Jaburek: Pardon me?

Trial Examiner Lyons: I was just wondering if that was
of any importance, that was all. The fact is, the militia came
there.

Mr. Nicoson: It just encumbers the record, but I have no
objection to it. It happened.

Q. (By Mr. Jaburek) After the militia was withdrawn, was the—strike that out, please.

While the militia was here, did the strikers engage in picketing the company's plant?

A. No.

Q. After the militia was withdrawn, was the picketing resumed?

396 A. Yes, sir, picketing was resumed about August the 4th, 1935.

Q. And how long did it continue thereafter?

A. To date.

Q. Approximately how many strikers engaged in said picketing at any one day, if you are able to give a general statement?

Trial Examiner Lyons: That is, between August 4th and the present time?

Mr. Jaburek: Yes, in any one day.

Trial Examiner Lyons: Yes.

A. The number of pickets identified as former employees, would be from fifteen to about one hundred and twenty five.

Q. (By Mr. Jaburek) Now, on an average how many of those strikers were there at the plant at one and the same time, engaged in this picketing?

Mr. Nicoson: That is objected to, for the reason that it is too broad. He does not say, when.

Mr. Jaburek: Oh, during the period—

Trial Examiner Lyons: Well, if you object—I had hoped that we could get along with this, but any objection that you put in, of course will be considered.

Mr. Nicoson: I think that we have gone into this thing enough now.

If he wants to go on, I am going to have to state my objection again.

397 Trial Examiner Lyons: I am very glad to have you do so. I want it noted, Mr. Nicoson.

In the face of the objection of counsel, if you are going into this period between August the 4th and the present date, you will have to go into it with more particularity, Mr. Jaburek.

Mr. Jaburek: Well, Mr. Examiner—

Trial Examiner Lyons: I would not take it day by day, however.

Mr. Jaburek: Well, I thought that I could cover it with one general question, which I do not think would prejudice counsel's position at all.

Trial Examiner Lyons: Well, of course counsel thinks it does, and he has a right to object.

Mr. Jaburek: Oh, yes.

Trial Examiner Lyons: And I think I must sustain him.

Mr. Jaburek: Very well.

Q. (By Mr. Jaburek) Do you know how many strikers during this period engaged in this picketing at one and the same time?

Mr. Nicoson: Well, now, we object to that question as—

A. At one time, there might be 15—

Mr. Nicoson: Just a moment. We insist on our objection. That is the same question.

Trial Examiner Lyons: Well, of course we have got 398 to get at this in some way, and we hardly want to go into it day by day and hour by hour.

Mr. Jaburek: I will take it up that way if counsel insists, Mr. Examiner.

Trial Examiner Lyons: Perhaps counsel can get together on it. Do not misunderstand me as being critical, because you are quite within your rights.

Mr. Nicoson: We will stipulate that the plant was picketed and is picketed today, if that will help counsel out any.

We will be very glad to make that stipulation.

Trial Examiner Lyons: Well, I—

Mr. Nicoson: (Continuing) That the picketing was resumed on or about August the 4th, and continued on to the present time.

Mr. Jaburek: Now, just one more question.

Trial Examiner Lyons: Apparently that is not enough for counsel for respondent, without the number.

Mr. Nicoson: Well,—

Mr. Jaburek: Just one more question.

Q. (By Mr. Jaburek) The average number of pickets there at one and the same time—

Trial Examiner Lyons: Would that be stipulated?

Mr. Jaburek: That is all I am trying to show now—fifty.

399 Mr. Nicoson: Fifty?

Mr. Jaburek: Yes. It is stipulated that approximately fifty strikers have engaged in picketing of respondent's plant daily since approximately August the 4th, 1935 at one and the same time,—

Trial Examiner Lyons: Is that agreed to by you, Mr. Nicoson?

Evidence on Behalf of Respondent.

Mr. Jaburek: (Continuing) —up to the present time.

Mr. Nicoson: Well, the way he has expressed it—I mean to say, I think he is right about it; but I want the further statement in there that the fifty pickets, to which we will agree, are not present at all times, but that the number varies, though at some time during the day the number of pickets does rise to the number of 50, but they are not there all the time.

Mr. Jaburek: Well, now, the testimony is,—I suggest this may be off the record, Mr. Examiner.

(Discussion off the record.)

Trial Examiner Lyons: Take up another subject.

Q. (By Mr. Jaburek) When did the respondent resume the operation of its plant, Mr. Grabbe?

A. At 7 o'clock in the morning of July 23rd, 1935.

Q. And has been in operation since?

A. It has.

Q. For how long a period of time were applicants for 400 employment hired after the plant resumed operations?

Mr. Nicoson: We object to that, Mr. Examiner, for the reason that it does not have anything to do with this case. The applicants who were hired do not have anything to do with this proceeding.

Mr. Jaburek: I think it has—

Trial Examiner Lyons: Is not the method by which they established or re-established operation, of some importance?

Mr. Jaburek: (Continuing) —a great deal to do with it.

Mr. Nicoson: I will withdraw the objection.

Trial Examiner Lyons: Proceed.

Q. (By Mr. Jaburek) You may answer the question, Mr. Grabbe.

The Witness: What is the question?

Mr. Jaburek: The reporter will read it.

(The question was read by the reporter as above recorded.)

Q. (By Mr. Jaburek) I mean for how long a period of time did you keep on hiring applicants for employment after the plant resumed operation?

A. I don't understand your question.

Mr. Jaburek: Well, strike out the question.

Q. (By Mr. Jaburek) Are all of the available places in the plant now filled?

A. Yes, sir.

Q. When were they first filled after July the 23rd, 1935?

401 A. We had a full force about the second week of September, 1935.

Q. During the period between July the 23rd, 1935, and August the 19th, 1935, how many applications for employment were received by the company?

A. About three thousand.

Q. Included in this number how many were striking employees?

Mr. Nicoson: Now, we object to that, Mr. Examiner, for the reason that the books of the company are the best evidence as to that.

Trial Examiner Lyons: Well, I suppose—

Mr. Jaburek: If he knows.

Mr. Nicoson: No, even if he knows, the books of the company are still the best evidence.

Trial Examiner Lyons: Well, I suppose that is so, but would counsel insist that the books be produced?

Mr. Nicoson: Certainly.

Trial Examiner Lyons: And the names of each of the applicants be introduced.

Mr. Nicoson: Certainly.

Trial Examiner Lyons: Seriatim.

Mr. Nicoson: Absolutely.

Trial Examiner Lyons: Each name?

Mr. Nicoson: Absolutely.

Trial Examiner Lyons: Well, I suppose they are entitled to that, Mr. Jaburek.

Mr. Jaburek: I do not think so.

Trial Examiner Lyons: It is going to take some time.

Mr. Jaburek: Under the stipulation that we entered into the other day, it was understood that we would not produce the payrolls.

Mr. Nicoson: No.

Mr. Smith: No.

Mr. Jaburek: And the reason was stated.

Mr. Smith: That was not in the stipulation.

Mr. Nicoson: No.

Mr. Jaburek: It was not in the stipulation, but it was the consideration for the stipulation.

Mr. Smith: No, it was not.

Trial Examiner Lyons: I do not believe that the payrolls were spoken of—at least I do not remember that the payrolls were spoken of, to me; but you gentlemen may have agreed on something that I did not know about.

Mr. Jaburek: Mr. Smith, and Mr. Nicoson—

Mr. Smith: Counsel stated to me that he did not want to hold anything back, but he would not produce the payrolls.

(Discussion off the record.)

Trial Examiner Lyons: Read the last question please, Mr. Reporter.

(The question was read by the reporter as above recorded.)

403 Mr. Jaburek: I will withdraw the question.

Trial Examiner Lyons: That question is withdrawn. Read the previous question please, Mr. Reporter.

(The preceding question and answer referred to were read by the reporter as above recorded.)

Trial Examiner Lyons: Well, now, that question and answer are still in. You have withdrawn the following question, if I understand it.

Mr. Jaburek: Yes, I have withdrawn the last question, Mr. Examiner.

Trial Examiner Lyons: Put your next question then, and I will pass on that.

Q. (By Mr. Jaburek) Mr. Grabbe, have you occasion, or had you occasion to go through your plant each working day during the period from July 23rd, 1935 to August 19th, 1935?

A. Yes, sir.

Q. Did you make any observation of the persons who were working on the different days during that period?

A. Yes.

Q. Now, calling your attention to August 19th, 1935, did you observe how many former employees were on that day in the employment of the company?

A. Yes, sir.

Mr. Nicoson: That is objected to.

Q. (By Mr. Jaburek) (Continuing) In its plant.

404 A. Yes.

Mr. Nicoson: That is objected to, Mr. Examiner, unless he states specifically what departments and what locations in his plant they are in.

Mr. Jaburek: I submit that counsel can ask him about that on cross-examination.

Mr. Nicoson: He does not say, people in the plant, or office workers, or supervisors, or what.

Trial Examiner Lyons: Perhaps if you would enlarge the term "former employees" it would obviate the objection.

Of course some of those who had continuously worked there would be former employees. I take it that you are trying to

find out how many of those who had stopped work approximately on March the 23rd and then had re-entered the employ of the company some time later, there were.

Mr. Jaburek: Well, the evidence is that all of the employees went out within a week after March 23rd.

Trial Examiner Lyons: Well, not all. The foremen and some others stayed.

The Witness: Yes.

Mr. Nicoson: Was Mr. Grabbe through—

Trial Examiner Lyons: I do not know—

Mr. Nicoson: —a week after the strike?

Trial Examiner Lyons: Let us not get into any personal controversy.

405 Mr. Nicoson: I do not think that the evidence shows that at all.

Mr. Jaburek: What is the last question, Mr. Reporter?

Trial Examiner Lyons: Strike it out, and put another question.

Mr. Jaburek: What is the last question please?

(The question referred to was read by the reporter as above recorded.)

Trial Examiner Lyons: Well, I think that question may be answered. It does not give us any information that we need, but in itself it is harmless, and I am going to permit it.

Q. (By Mr. Jaburek.) How many were there on that day?

A. I gathered the impression that—

Mr. Nicoson: Well, I object—

A. About—

Mr. Nicoson: I object to any impression that was gathered, Mr. Examiner.

Trial Examiner Lyons: State your observation.

Q. (By Mr. Jaburek.) State your best recollection.

Trial Examiner Lyons: State your observation, Mr. Grabbe.

A. About 200.

Q. (By Mr. Jaburek.) And how many of that 200 were office employees?

A. About 25.

Q. And how many were employed in the production 406 department of the plant of the company?

A. What is the question please?

Mr. Jaburek: Will the reporter read it please.

(The question referred to was read by the reporter as above recorded.)

A. On August the 15th?

Mr. Jaburek: Yes.

A. About 300.

Trial Examiner Lyons: No.

Q. (By Mr. Jaburek.) I mean, of the former employees,
Mr. Grabbe.

Trial Examiner Lyons: Former employees.

A. Of the former employees?

Mr. Jaburek: Yes.

A. About 240.

Q. (By Mr. Nicoson.) How many?

A. 240.

Q. (By Mr. Jaburek.) You testify that 200 former employees were in the plant on that date,—or you did testify to that effect.

Now, you say there were 240 in the production department. Will you please explain those two figures?

A. There were 240 former employees who had come back to work.

Q. And were working on—

407 A. On or about August the 15th.

Q. And the office employees, were they included in that figure?

A. Yes.

Q. And the office figure was how many?

A. About 25.

Q. So that there were approximately 215 in the production department of the plant at that time, is that correct?

A. Approximately.

Q. Now, calling your attention to June the 7th, 1935—well, no. Strike that out please.

Will you state briefly how long the plant remained in operation after March 23rd, 1935?

Mr. Nicoson: To which we object for the reason that the question has at least twice been answered.

Trial Examiner Lyons: Well,—

Mr. Jaburek: He stated—

Mr. Nicoson: The record will show it.

Trial Examiner Lyons: Do you concede that the question has been answered, Mr. Jaburek?

Mr. Jaburek: No.

Trial Examiner Lyons: Well, I think you may have it stated again. It will do no harm to repeat it, if it is repetition.

You may answer the question, Mr. Grabbe.

408 A. The power house and the office we operated one week. All the rest of the factory departments were closed down as of Saturday night, March 23rd.

Q. (By Mr. Jaburek.) And the office one week later?

A. Up to Friday, inclusive.

Q. Up to what; what Friday?

A. The Friday following March 23rd.

Q. And that was closed?

A. Yes.

Q. So that on or about March 30th, 1935, the entire plant was shut down?

A. It was.

Q. And how long did it remain in that condition?

A. It remained in that condition until the factory was reopened on the morning of July the 23rd, 1935.

Mr. Jaburek: Mr. Reporter, will you mark this document with the next Respondent's Exhibit number in order?

(The document referred to was marked "Respondent's Exhibit No. 16", for identification.)

Q. (By Mr. Jaburek.) Mr. Grabbe, I show you the document which has just been marked as Respondent's Exhibit 16 for purposes of identification, being a notice over your signature dated March the 13th, 1935.

A. Yes.

Q. Will you state what was done with that notice?

409 A. That is a notice that was sent to—

Trial Examiner Lyons: Well, the question is, what was done with it, Mr. Grabbe.

The Witness: Yes.

Trial Examiner Lyons: You started to say something that sounded like a description.

The Witness: No.

Trial Examiner Lyons: Perhaps I may have been mistaken.

A. It is a notice that was sent to all the department heads.

Trial Examiner Lyons: All right. It was your form of expression that misled me. Go ahead.

A. (Continuing.) And to all but a few of the office employees.

Mr. Jaburek: I show it to counsel.

Mr. Nicoson: No objection.

Q. (By Mr. Jaburek.) Now, Mr. Grabbe, calling your

attention to June the 7th, 1935: Did your company cause an announcement to be placed in the newspapers?

A. It did.

Mr. Jaburek: Mr. Reporter, will you mark this newspaper as Respondent's Exhibit No. 17 for identification.

(The newspaper referred to was marked Respondent's Exhibit No. 17, for identification.)

Q. (By Mr. Jaburek.) Is this the announcement you refer—showing you Respondent's Exhibit 17 for identification?

410 A. Yes, it is.

Q. In what paper or papers did it appear?

A. It appeared in the Terre Haute Star, in the Terre Haute Tribune, and in the Spectator.

Q. And it was identical in all of those newspapers, was it?

A. Yes.

Q. Now, calling your attention to on or about June the 7th, 1935, Mr. Grabbe, did you receive a communication from any of the members of the union, or any officer of the union?

A. We did.

Q. And that was the letter of June 7th, was it—

A. It was.

Q. (Continuing) —which has been offered and received in evidence by the union?

A. Yes, sir.

Q. As a result of that, was there a meeting held?

A. A meeting was held on June the 11th.

Q. 1935?

A. Yes, sir.

Q. Where was it held?

A. At the Deming Hotel.

Q. Who was present at that meeting?

A. Brown, Heuer, Cox, Gorby, Sr., Gorby, Jr., and I.

Q. Now, will you state what was said at that meeting, and by whom it was said?

411 A. Mr. Cox stated that the people wanted to go back to work; that they were satisfied with the working conditions, and with the wages, realizing that on the question of wages we were paying as much as we could afford to pay; but that the union demanded a closed shop.

We told him that we would not—

Q. Well, now, is that what you said, or is that what somebody else said?

A. Mr. Gorby.

Q. Then answer the question please.

A. Mr. Gorby stated that the company would not grant a closed shop, but that we would take back all of the former employees without discrimination, at the same rate of pay as they had received before the strike, and under the same working conditions.

Q. Proceed.

A. (Continuing.) And Mr. Cox stated that they would come back to work but only under their own conditions.

He further stated that he would report the conversation to the body, and report back to us the action of the body.

Q. Was anything further said at that time and place if you recall?

A. Mr. Heuer wanted to know if the company had a black-list, and I told him no.

Q. Is there anything further, that you recall?

412 A. Mr. Heuer wanted to know if the rumor was true that the company was going to put on additional watchmen; and I told him, yes, that rumors were current in Terre Haute, that had come to my ears and attention, that some action was going to be taken along the lines of—that some action was going to be taken against the plant, either dynamiting it, or setting it on fire; and not only for that reason, but also because a provision in our insurance policies provided that we give and afford reasonable protection to the plant, we had decided to put on additional watchmen in order to protect it.

Q. Now, Mr. Grabbe, have you told us all that you recall of what took place at this meeting?

A. Yes, sir, that is the substance of all that I remember of the meeting.

Q. For the purpose of refreshing your recollection, did Mr. Cox ask anything in regard to discrimination in rehiring, and did Mr. Gorby make a reply?

A. I don't remember.

Q. Did Mr. Gorby make any mention of that at the meeting of June 7th?

A. Mr. Gorby did.

Q. What was said on that point?

A. Mr. Gorby discussed the contents of the advertisement, and told them that that was the policy of the company.

Q. And did Mr. Heuer—and I am still refreshing your 413 recollection—make any remark about having no complaint to make?

Mr. Nicoson: Just a moment. What is the question?

Trial Examiner Lyons: Read the question please, Mr. Reporter.

(The question was read by the reporter as above recorded.)

A. Yes, Mr. Heuer did.

Q. (By Mr. Jaburek.) What did he say, if anything?

A. He said that they had no complaint to make; all they wanted was a closed shop.

Q. Now, during the several conferences and meetings that were had with the union at various times from August, 1934 until March 23rd, 1935, were there any grievances which had been taken up at any time, which were not adjusted by the company?

A. None that I know of.

Q. Do you remember the testimony of Mr. Heuer or Mr. Cox with reference to a request made by you to burn the plant down?

A. No.

Q. Was any such request made by you?

A. No.

Q. Was any such request made by Mr. Gorby?

A. I don't remember.

Q. Did you hear any such statement made by Mr. Gorby?

A. I don't remember.

414 Q. During the period of the shut-down, did your company receive any letters from any of its customers regarding the cancellation of orders?

A. Yes, sir.

Mr. Jaburek: I wonder if these several letters could be put in under one exhibit number.

Trial Examiner Lyons: How many are there?

Jaburek: I might say, they are all of the same general character.

Mr. Nicoson: All on cancellation?

Mr. Jaburek: All on cancellation, stating that the orders are being placed elsewhere.

Mr. Nicoson: No objection.

Mr. Jaburek: Possibly they had better have separate exhibit numbers—or do you think they might go in under one number?

Trial Examiner Lyons: Well, the method of introducing them is a matter of small importance. When they are offered in evidence, why, then we will decide how they will go in.

They are not offered yet as I understand it.

Mr. Jaburek: Well, let us have them identified by one exhibit number; that is all I am asking at this time.

Trial Examiner Lyons: They can be identified under one number.

Mr. Nicoson: No objection.

415 Trial Examiner Lyons: Is there any objection to their going in?

Mr. Nicoson: No.

Trial Examiner Lyons: I mean, if and when offered, you are not objecting to them?

Mr. Nicoson: If they are offered, we will not object to them now.

Trial Examiner Lyons: All right. Now, if that is the case, there being so many of those sheets, I take it they might go in under some sort of a stipulation, might they not?

Mr. Nicoson: No, I think we ought to have them in here, Mr. Examiner.

Trial Examiner Lyons: All right.

Mr. Nicoson: Let them go in.

Trial Examiner Lyons: All right. Nobody suggests that they should be put in as separate exhibits.

Mr. Nicoson: No.

Mr. Smith: I would suggest that they go in as one.

Trial Examiner Lyons: One exhibit.

Mr. Nicoson: Why not offer them all as one exhibit?

Trial Examiner Lyons: Put them in as one exhibit, numbered with one number, with the number of sheets indicated.

Mr. Jaburek: There are 12 letters from customers, cancelling orders. I am putting them only in for identification at this time.

416 (The documents referred to were collectively marked Respondent's Exhibit No. 18, for identification.)

Trial Examiner Lyons: This might be a good time to take a recess. We have been sitting now since 9 o'clock, and it is nearly eleven o'clock.

Suppose we take a ten minute recess at this time.

Mr. Jaburek: I may say, Mr. Examiner, I expect to close with this witness in just a few more minutes.

Trial Examiner Lyons: Would you rather proceed?

Mr. Jaburek: No, I would rather we suspend for a recess at this time.

Trial Examiner Lyons: Very well.

Mr. Jaburek: I am simply trying to give you that assurance about the witness.

Trial Examiner Lyons: All right. We are in recess for 10 minutes.

(Thereupon a recess was taken, after which the proceedings were resumed as follows:)

Trial Examiner Lyons: Come to order. Counsel may proceed.

Q. (By Mr. Jaburek) Mr. Grabbe, on an average, what length of time are raw materials stored in your plant before being used in production?

A. From two and a half to four months.

Q. Now, on an average what length of time is the finished product, after it has been completed kept on hand before it is used to fill orders?

A. The same period.

Q. The same period?

A. Two and a half to four months.

Q. It is true, is it not, that at times you completely finished a part of your product, and have that part in a finished condition on hand for some length of time before it is joined with other parts, to make the complete article; is that not so?

A. Yes, sir.

Q. On an average what length of time do you keep on hand a finished part before it is used with other parts to make a completed article?

A. About a month and a half.

Mr. Jaburek: You may take the witness.

Cross-Examination.

Q. (By Mr. Nicoson) Mr. Grabbe, you have testified concerning certain meetings that were had after an agreement was entered into with the union on July the 14th, 1934. That is true, is it not?

A. Yes, sir.

Q. And in those various meetings, were matters presented to you, or to other representatives of the management, that arose in the due course of operation of the plant?

418 A. Yes.

Q. They were what might commonly be termed as grievances of employees, were they?

A. Some were.

Q. So that the transactions that you had with the Union officials and the Scale Committee, were matters affecting the employees of your concern, were they not?

A. Yes.

Q. And those matters came up in the regular course of the operation of your plant?

A. Yes.

Q. Now, you have testified that the reason that you posted these notices, or sent them out, was that you had been requested to do so by the employees of the company; is that true?

A. Yes.

Q. Can you state how many requests were made upon you to find out what the Scale Committee was doing?

A. Well, it was a matter of continual occurrence. It happened many times a day.

Q. How many people would ask you that question?

A. In one day?

Q. Yes.

A. Oh, sometimes as many as fifty or one hundred.

Q. And were any of those people members of the union, if you know?

419 A. I do not know whether they were or not.

Q. You do not know?

A. No, sir.

Q. So that these people who asked you what the Scale Committee was doing, may not have been members of the union; is that not true?

A. I do not know.

Q. All right. Now, you testified yesterday as to a call made upon you by Robert Mythen, Federal conciliator.

A. Yes.

Q. Do you know just about what date Mr. Mythen called upon you?

A. Saturday morning, March the 23rd, 1935.

Q. Did he ever call upon you at a later date?

A. No.

Q. Did you have any discussion—did he have any discussion with you on the morning of March 23rd, 1935?

A. He did.

Q. What was that discussion? State what was said by him and what was said by you?

A. Mr. Mythen stated that all that the union wanted was a closed shop, and that that was not an unreasonable demand.

Q. And what was your reply if any?

A. I told him that the company would not grant a closed

shop; that it had told the Scale Committee time after time that it would not do so, and the reasons why the company would not grant it.

Q. And what was the company's reason?

Mr. Jaburek: Well, I object to what the reason was, Mr. Examiner.

Mr. Nicoson: Well, now, he stated—he just got through stating the reasons.

Trial Examiner Lyons: Well,—

Mr. Nicoson: And we would like to know.

Trial Examiner Lyons: The question is: What was the company's reason?

The answer may state what the company's reason was as expressed by you in that conversation.

The Witness: Oh.

Trial Examiner Lyons: That is what you wanted?

Mr. Nicoson: I will reframe it, to make the question read that way.

Q. (By Mr. Nicoson): What were the reasons as stated by you at that time?

A. That the company believed that everyone was entitled to a job, regardless of religion, nationality, and non-affiliation or affiliation with the union.

Q. And that was the only reason that the company had for not entering into a closed shop agreement, is that correct?

Mr. Jaburek: Just a moment, that is objected to, Mr. 421 Examiner.

Trial Examiner Lyons: That is subject to the same objection. You may ask him whether that was the only reason he gave.

Q. (By Mr. Nicoson): Was that the only reason stated by you at that time, Mr. Grabbe?

A. It was.

Q. Now, directing your attention to you: testimony given with reference to the date of July 19th: I believe you said that around eight or nine o'clock p. m. there were two or three hundred pickets at the plant.

Is that true?

A. At what time?

Q. Between the hours of 8 and 9 o'clock p. m.

A. Approximately, yes.

Q. Were those pickets all in one place?

A. No.

Q. Where were they stationed?

A. The pickets were stationed at the several entrances to the plant.

Q. And there were other people there at that time also, were there?

A. Yes.

Q. Where were they stationed?

A. They were stationed at the several entrances to the 422 plant, also.

Q. And you are personally acquainted with all of your strike-employees, are you?

A. I am not.

Q. Then how do you know that those or three hundred people whom you thought were pickets were actually as a matter of fact striking employees?

A. Your question was "all".

My answer was that I do not know them all.

Q. Well, were you personally acquainted with those two or three hundred who you say were there as pickets?

A. Some by name and some by face.

Q. All of them?

A. Yes.

Q. You were making visits around to these various gates, were you?

A. I did, constantly.

Q. And from that you made your calculation as to the number, did you?

A. Yes, sir, constantly.

Q. Now, was it daylight or dark at that time?

A. At what time?

Q. Between the hours 8 and 9 o'clock p. m. on July the 19th, 1935.

A. In the morning it was daylight.

423 Q. Nine p. m. I say.

A. At night!

Q. Yes.

A. It was dark.

Q. What were the lighting facilities around these various places that you have testified to?

A. The lighting facilities?

Q. Yes.

A. On the 19th street, there are street lights; on a part of Beech Street, there are street lights. The railroad gate is dark; there is no street lighting there; and the Ash Street gate is dark.

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Q. And it was dark—

A. (Continuing) : There is no illumination in front of the office, so far as street lighting is concerned.

Q. So that at the railroad gate, in the dark, you recognized these men who were pickets?

A. On what night?

Q. On the night of July the 19th, 1935. We are still talking about July 19th, 1935.

A. I did not.

Q. Did you recognize them at the Ash Street gate?

A. I did not.

Q. Did you recognize them at the Beech Street office?

A. I did not.

424 Q. Did you recognize them at the 19th Street office?

A. I did not.

Q. Then, Mr. Grabbe, how are you in a position to say that there were between 200 and 300 around your plant on that night, if you could not recognize them?

A. Are you referring to the pickets, now, or are you referring to others, unidentified?

Q. Pickets,—that is right.

A. I do not recall that I testified to there being two or three hundred identified pickets.

Q. You just testified in answer to my question here just a moment ago—

A. To the people.

Q. Were you speaking of pickets?

A. I say, you are speaking of people, not pickets.

Q. Then between the hours of 8 and 9 o'clock p. m. on July the 19th, 1935, you do not know how many pickets there were around your plant, do you?

A. I do not.

Q. Between the hours of 9 o'clock p. m. and 10 o'clock p. m. you do not know how many pickets there were there, do you?

A. Not pickets, no.

Q. So that the people whom you have testified were there may or may not have been pickets?

A. That is correct.

425 Q. For all you knew.

A. That is correct.

Q. Now, on the date of July 29th—directing your attention to the date of July 29th, 1935: You testified that between the hours of 7 a. m. and 8 a. m. there were 50 pickets around the plant: is that true?

A. Approximately so, yes.

- Q. Where were those pickets stationed?
A. At the same locations—
Q. The same locations.
A. —that I testified to.
Q. And you made the rounds of those four different gates?
A. Constantly.
Q. And you saw those people?
A. I did.
Q. And you recognized them?
A. I did.
Q. And at the hour of 6 o'clock p. m. how many pickets
were there on that day?

- A. What day?
Q. July the 20th.
A. Between 200 and 300.
Q. How were they stationed?
A. At the same locations.
Q. How many were at the Ash Street gate?
426 A. The largest number was in front of the office.
Q. How many were at the Ash Street gate?
A. Oh, at the other gates, the numbers were materially
smaller.

Mr. Niceson: I move to strike the answer out, Mr. Ex-
aminer—

Trial Examiner Lyons: Yes.

Mr. Niceson: —as not responsive.

Trial Examiner Lyons: The answer may be stricken. The
question was specifically: How many were at the Ash Street
gate. That question should be replied to by giving the num-
ber, if you can give the number.

- A. I cannot give the number.
Q. (By Mr. Niceson): How many were at 19th Street?
A. About 20 or 25.
Q. At the Railroad gate?
A. About the same number.
Q. And how many were there in front of the office?
A. At least 200.

427 Q. And you do not know how many were at the Ash
street gate?

- A. Approximately 10.
Q. Now, you testified that at about nine o'clock—well,
strike that out.

You also testified that at about six p. m., there were be-
tween two thousand and three thousand other persons there;
is that true?

A. On—

Q. July 20th?

A. Saturday night?

Q. July 20th, 1935.

A. Yes.

Q. Is that true?

A. Yes.

Q. And were those pickets in a body by themselves, or were they in that crowd, or not?

A. They were in the crowd.

Q. And they were intermingling back and forth with two or three thousand people, were they?

A. Yes, sir.

Q. But still you could say with positive knowledge that two or three hundred of those people were pickets?

A. Yes.

Q. Now, directing your attention to the hour of 9:00 o'clock p. m., on the evening of July the 20th, 1935; how many pickets were on duty at that time?

A. About the same number.

Q. And how were they stationed?

A. They were stationed about—they were stationed as I told you they were stationed earlier in the evening.

Q. How many would you say?

A. You must understand that there was movement on the part of the pickets. At times they would concentrate in front of the building, and the numbers at the various entrances that I have mentioned were materially decreased.

Q. Yes, but—

A. (Continuing): At times.

Q. But at this specific time that we are speaking of, namely, the hour of 9:00 o'clock p. m. on July the 20th, 1935—that is what we are dealing with now, 9:00 o'clock—how many of those pickets were at the Ash street gate?

A. Approximately ten.

Q. And how many were at the 19th street gate?

A. My answer would be the same as it was before.

Q. How many?

A. 20 to 25.

Q. How many?

A. 20 to 25.

Q. And how many at the railroad gate?

A. Approximately 20 to 25.

429 Q. How many in front of the office?

A. Approximately 200.

Q. Now, at the Ash street gate on the night of July the 20th, 1935, at the hour of 9:00 o'clock, p. m., had there been a light put up there since the previous day?

A. Yes.

Q. And had there been at the railroad gate?

A. Yes.

Q. So that you did have illumination at those points at that time?

A. Yes.

Q. And those pickets went in and out of the crowd, as I understand your testimony.

A. What is that again?

Q. The pickets went in and out of the crowd?

A. They did.

Q. And how many people were there?

A. Where?

Q. Around the plant at that time?

A. On what night?

Q. July the 29th—

A. Saturday night?

Q. July the 29th, 1935, at the hour of 9:00 o'clock, p. m.?

A. About 5,000—3,000 to 5,000.

Q. Did you not testify just a little while ago that there were between 6,000 and 8,000 people?

430 A. Possibly.

Q. Do you want to change your testimony now?

A. Not necessarily.

Q. You do not know how many there were?

A. I have a good idea—yes.

Q. Well, now, which was it, 3,000 people or 8,000 people?

A. What particular part of the plant are you referring to now?

Q. Around your plant.

A. Well—

Q. I asked you—

A. I am talking about in front of the office.

Q. How many people were around your plant, Mr. Grabbe, on the night of July 20th, 1935, at the hour of 9:00 o'clock, p. m.?

A. Around the plant?

Q. Yes.

A. About 8,000.

Q. Now, what do you base your estimate upon?

A. Knowledge of crowds.

Q. You have testified that those people were milling around, and moving back and forth at all times; is that not right?

A. They were, but some were not.

Q. It is quite possible that those people had gone to the railroad gate when you were there, and then back to the office when you were there—

431 A. That is true.

Q. —is that not true?

A. Possibly.

Q. So that your estimate of 8,000 people is possibly not quite correct; is that not right?

A. Possibly.

Q. You may have been estimating the same people at the same time, in other words?

A. How is that?

Q. Or rather, at different places, I mean to say?

A. Yes, that is possible.

Q. And also—

A. (Continuing): But highly improbable.

Q. And that same thing also may obtain as to the number of pickets, is that not true?

A. It could, yes.

Q. Those pickets were in and out of the crowd at all times, were they not?

A. They seemed to move around quite frequently.

Q. So that you are not positive of whether or not they were pickets, or somebody else, are you?

A. No, I would not say that.

Q. Well, what would you say?

A. In answer to what question?

Q. Well, you just said, you would not say. Now, I 432 am asking you what you would say?

A. Well, I would say that a knowledge of most of the people who have worked in the factory would make it quite possible to identify whether the same individual was being counted one, twice, or one hundred times.

Q. Yes, sir; and also the fact that the pickets were intermingling, and going in and out of the crowd, would make it an impossibility to say how many pickets there were, would it not?

A. Not an impossibility; just that much more difficult.

Q. I see. But you surmounted that difficulty, and you were able to count them?

A. Yes, I thought so.

Q. How many were there about the hour of 11:00 o'clock p. m., on the night of July 20th, 1935?

A. The crowd started—

Q. How many pickets—I will change that. How many pickets were present?

A. Probably about 50.

Q. And how many other than pickets—how many other persons?

A. Probably several thousand. The number was dwindling down at that time.

Q. Did you not testify just a few moments ago that there were only a few hundred,—on your direct examination?

433 A. I do not recall.

Q. As a matter of fact, you do not know how many were there at 11:00 o'clock, p. m., on that night, do you?

A. Yes, I have an impression.

Q. Well, when you testify to a few hundred, that may or may not be correct; is that not right?

A. Why not?

Q. How?

A. Why not?

Q. Well, I am asking you the questions, sir. You answer the questions.

Mr. Jaburek: Oh, no; counsel is simply arguing with the witness, now.

Mr. Nicoson: Well, if the Examiner please, the witness—

Trial Examiner Lyons: Just a moment.

Mr. Nicoson: —has repeatedly tried to interrogate me, and I am not a witness.

Trial Examiner Lyons: Let us not have any personal controversy here.

The Witness: I am not trying to interrogate counsel. I am just trying to find out—

Trial Examiner Lyons: Please do not volunteer anything, Mr. Grabbe.

The Witness: All right, sir.

Trial Examiner Lyons: The answer may be stricken.

434 Mr. Nicoson: If you do not understand the question, you may just say so.

Trial Examiner Lyons: Yes, but do not answer a question by asking another one.

The Witness: All right.

Trial Examiner Lyons: Try so far as you can to answer the question as it is put to you.

The Witness: The crowd started to dwindle before 11:00 o'clock, and at 11:00 o'clock, or shortly thereafter, there were very few people left there.

Q. (By Mr. Nicoson) So that your estimate of a few thousand people there is not correct; is that right?

A. At what time?

Q. When you made your estimate here a few moments ago that at 11:00 o'clock there were just a few thousand people, was that right, or had it dwindled down to that?

Trial Examiner Lyons: Do you mean, during cross-examination, Mr. Nicoson?

Mr. Nicoson: Yes.

Trial Examiner Lyons: His statement during cross-examination?

Mr. Nicoson: Yes.

Trial Examiner Lyons: I do not remember that.

The Witness: I do not think that I said 11:00 o'clock specifically. I think what I said was, about 11:00 o'clock.

435 Q. (By Mr. Nicoson) And you do not recall testifying on direct examination that you thought there were only a few hundred there?

A. I do not recall that I said, at 11:00 o'clock. I said at about 11:00 o'clock.

There is a difference between the two.

Q. Well, at about 11:00 o'clock on that date, how many other people were around there, excluding the pickets?

A. Shortly before 11:00 o'clock there were several thousand.

Q. Yes?

A. (Continuing) And shortly after 11:00 o'clock, the number was very small.

Q. And—

A. And could not exceed a few hundred.

Q. And how many were there at 11:00 p. m.?

A. I cannot answer that question.

Q. Now, was it daylight or dark at 11:00 o'clock p. m., on the night of July the 20th, 1935?

A. At 11:00 p. m.?

Q. Yes.

A. July 20th, 1935?

Q. Yes.

A. It was dark.

Q. How many pickets were there at the Ash street gate at that time, on that date?

A. I do not know.

436 Q. How many were at the railroad gate at that time, on that date?

A. I do not know.

Q. And how many were at the 19th street gate, at that time, on that date?

A. I do not know.

Q. How many were in front of the office?

A. I do not know how many there were in front of the office or at any of those other positions, at exactly 11:00 o'clock.

Q. Then, your testimony that at 11:00 o'clock, p. m., on the night of July the 20th, 1935, there were 50 pickets around your plant there, is not true, is that not right—of your own personal knowledge?

A. That is not true.

Q. All right. Now—

A. Strike out the answer. What was that question?

Mr. Nicoson: You have answered the question.

Trial Examiner Lyons: The witness is entitled to have the question read—

The Witness: Well—

Trial Examiner Lyons: —if he did not understand it.

Mr. Nicoson: He has answered the question, Mr. Examiner.

Trial Examiner Lyons: Read the question.

(The question was read by the reporter as above
437 recorded.)

Q. (By Mr. Nicoson) Now, what is the answer?

A. The point is—

Mr. Nicoson: Just a moment.

A. —that at exactly 11:00 o'clock—

Trial Examiner Lyons: Well, now—

A. (Continuing) —I do not know. I can only say about—

Q. (By Mr. Nicoson) You are sure there were some pickets there?

A. Certainly.

Q. Now, were you present at the factory all day between the hours of 7:00 o'clock a. m., and 11:00 o'clock p. m., on the date of July the 20th, 1935?

A. I was.

Q. At what time were you present at the factory on the date of July 21st, 1935?

A. All day and all night.

Q. Were you awake all that time?

A. Most of it.

Q. Well, how much of the time did you sleep, if any?

A. Very little.

Q. What hours did you sleep?

A. Whenever there might have been an opportunity.

Q. And how often did that opportunity occur?

A. Not very frequently.

438 Q. How much sleep did you get on that date?

A. I do not remember.

Q. Can you give us some idea?

A. I cannot.

Q. Were you asleep at 6:00 o'clock p. m., that day?

A. I do not remember.

Q. Were you asleep at 7:00 o'clock p. m., that day?

A. I had very little sleep that day and that night.

Q. Will you please answer the question.

Mr. Jaburek: The last question was as to whether he was asleep at 7:00 o'clock, and the witness has answered the question.

The Witness: At what time?

Q. (By Mr. Nicoson) At 7:00 p. m. on that date?

A. No, I wasn't.

Q. But you do not know whether you were asleep at 6:00 o'clock p. m. that date?

A. I do not remember, but if I was it would not have been for more than one minute or two.

Q. But you were awake at 7:00 p. m.?

A. I judge I was.

Q. How are you sure of that, Mr. Grabbe?

A. Because my watch stopped on that night.

Q. At 7:00 p. m.?

A. (Continuing) And I asked one of the men in the 439 plant what time it was.

Q. And what time did he say?

A. And he told me it was 7:00 o'clock.

Q. 7:00 o'clock?

A. Yes, sir.

Q. Where were you at that time?

A. That happened while I was eating supper.

Q. You could not have been asleep then, could you?

A. No.

Q. Where were you stationed at that time, at 7:00 o'clock p. m. that night?

A. I had just finished supper at 7:00 o'clock, and proceeded to the office.

Q. Did you have supper at home?

A. No.

Q. Where did you have supper?

A. In the plant.

Q. And whereabouts in the plant was supper served that night?

A. In the cafeteria.

Q. Where is the cafeteria in relation to the office?

A. About 150 feet from it.

Q. Is it in the same building?

A. No.

Q. In what building is the cafeteria located?

A. It is in the enameling department.

440 Q. That is to the north and east of the office building, is it not?

A. North and east.

Q. And you returned from supper about 7:00 p. m.?

A. I was through with supper at about 7:00 p. m., yes, sir.

Q. And about how long did you stay in the office after you returned from supper?

A. I do not remember how long.

Q. Would it have been 30 minutes?

A. It might have been anything.

Q. Might it have been an hour?

A. It might have been anything. I was around the plant continuously at that time.

Q. Then you do not know?

A. Well—

Q. That is the truth of it?

A. That would be correct substantially; yes, sir.

Q. How many pickets were on duty at 7:00 o'clock p. m. that night, around the plant?

A. The usual number.

Q. That is—

A. From two to three hundred.

Q. You made the rounds?

A. Constantly.

Q. How often did you make the rounds?

441 A. Constantly; I never got off of them.

Q. You were going continuously from gate to gate, were you?

A. That is correct.

Q. Now—

A. (Continuing) Well, that is, not necessarily from gate to gate, but that was also included.

Q. Well, how often did you go from gate to gate?

A. Many times a day and night.

Q. You did not have any set time?

A. No.

Q. To visit those gates?

A. No.

Q. It was just whenever the opportunity presented itself—

A. Well—

Q. —is that true?

A. What do you mean by "just whenever the opportunity presented itself"?

Q. Well—

A. I do not understand that.

Q. Well, I am asking—I am assuming, you were quite a busy man out there, and that you had your hands quite full.

A. Well—

Q. And that whenever you got a chance, you went to those gates to make your observations; is that true?

A. Oh, I do not know whether I had my hands full or not.

442 Q. Well, you had something to do?

A. Yes.

Q. You were occupied at least?

A. Yes, sir; I had something to do.

Q. So that you have no way of fixing the time when you made those different observations, have you?

A. I have not.

Q. And the previous testimony that you have given concerning the specific times that the pickets and other persons were at those different places, may or may not have been correct; is that not true?

A. The times were approximately correct.

Q. Well—

A. (Continuing) But there is not any reason to believe that the conditions were not as testified to.

Q. Now, on the evening of July 21st, 1935, at the hour of 7:00 o'clock p. m., how many pickets were present?

A. About two to three hundred.

Q. And how many were at the Ash street gate?

A. Probably none at that time, that night.

Q. And at the 19th street gate?

- A. About 25.
Q. And at the railroad gate?
A. About 25.
Q. And in front of the office?
443 A. At least 200.
Q. Were there any other people around there?
A. Yes, a lot of them.
Q. About how many?
A. Around ten thousand to twelve thousand people.
Q. Then, your testimony that you gave on direct examination that there were eight thousand people there, is not right, is that correct?
A. The crowd started to grow.
Q. And grew since ~~your~~ direct examination? When did the crowd begin to grow?
A. That night.
Q. And the crowd has also grown considerably since you had your direct examination, has it not?
A. No, it has not. You are talking about time now.
Q. Certainly we are talking about time.
A. Yes.
Q. And we are talking also about what you testified to?
A. Right.
Q. You testified on your direct examination that there were eight thousand people there, did you not?
A. At what time?
Q. At 7:00 o'clock p. m. on the night of July the 21st, 1935?
A. At about 7:00 p. m.
Q. Now, you say there were how many?
444 A. From eight thousand to ten thousand or twelve thousand people there that night.
Q. As matter of fact, you do not know how many people there were there, do you?
A. I have a very good idea as to how many there were.
Q. Yes, but you are laying the groundwork here, are you not, to avoid making any mistake, by estimating?
A. Not at all.
Q. (Continuing) Between eight thousand and twelve thousand?
A. Not at all.
Q. You could be four thousand off one way or the other, could you not?
A. Certainly.

Q. As a matter of fact, you do not know how many there were there, do you?

A. I will not admit that at all.

Q. I suppose not. Now, directing your attention to July the 22nd, 1935: how many hours were you on duty on that date at the plant?

A. Twenty-four hours a day.

Q. You were there all day?

A. Yes, sir.

Q. Did you sleep any that day?

A. When the opportunity presented itself—if it did.

445 Q. Was July the 22nd—were the happenings on July the 22nd much the same as they were on July the 21st?

A. In general they were; yes, sir.

Q. You slept when you could?

A. Yes—

Q. And if you could not, you were up and around the plant?

A. —for a few minutes; yes, sir.

Q. You made your usual rounds on that day?

A. I did.

Q. How many pickets did you observe at the hour of 9:00 o'clock a. m. on July the 22nd, 1935, at or around the plant?

A. At 9:00 a. m.?

Q. Yes.

A. This was on a Monday, was it not?

Q. How?

A. I would say, about 50.

Q. Then, your testimony on direct examination, where you said that there were between 200 and 300, is not correct, is it?

A. It is not—that is correct—or, rather, my testimony on that point was incorrect, for Monday morning.

Q. And how many other people were at the plant at that time, on that date?

A. Several thousand.

Q. How many are several thousand?

446 A. Two thousand to three thousand.

Q. Around at 6:00 o'clock p. m. of the same day, how many pickets were present?

A. The usual number.

Q. How many?

A. 200 to 300.

Q. And how many others?

A. The crowd at that time was probably around eight thousand to ten thousand people, all around the plant.

Q. Then, when you testified a little while ago on your direct examination that there were six thousand people down there at that time, that was incorrect, is that right?

A. That was not incorrect.

Q. Well—

A. I said, all around the plant. That means within a block or two.

Q. Well, now, where was this crowd of people that you have testified to, stationed there?

A. Beech street, Ash street and 19th street.

Q. Yes!

A. (Continuing) And on the streets a block or so away from the plant, that could be observed from the upper floors of the building.

Q. And were they observed?

A. Yes, sir.

447 Q. How many pickets were present at 7:00 o'clock on that day?

A. The usual number.

Q. Seven, p. m., that is.

A. The usual number.

Q. And how many other people?

A. The crowd was about 15,000—12,000 to 15,000 people, at that time.

Q. So the crowd increased from 6,000 people to 15,000 people in an hour, is that right?

A. It increased very rapidly.

Mr. Nicoson: I move that the answer be stricken out, Mr. Examiner, as not being responsive to the question.

I wish the Examiner would direct the witness to answer the questions.

Trial Examiner Lyons: What was the question?

(The question was read by the reporter as above recorded.)

Trial Examiner Lyons: The answer that it increased very rapidly may be stricken.

That question could be answered yes or no.

A. Yes.

Q. (By Mr. Nicoson) Now, where were you at 11:00 o'clock, p. m., on that date?

A. I do not know exactly where I was at 11:00 o'clock 448 p. m. on that date.

However, about 11:00 o'clock I was in the office.

Q. Where is your office located?

A. The office is located on the first floor, in the front of a four-story building, which building is on the southwest corner—or almost the corner of the property.

Q. And from your position in the office you observed that there were two or three hundred pickets in attendance at the plant at the various gates, at that time on that date, is that right?

A. That would not be right; no, sir.

Q. Well—

A. And that was not the circumstance, either.

Q. Then, how did you arrive at your figure that there were two hundred to three hundred pickets around the plant at that time?

A. I arrived at that figure from observation made during the rounds.

Q. And how did you arrive at your figure that there were 15,000 people present at that time?

A. The same answer would apply to that question also.

Q. What observations did you make, or conduct in order to arrive at your estimation that there were 15,000 people around your plant at that time, on that date?

A. I looked at them.

449 Q. From the office?

A. From different parts of the plant and buildings.

Q. And you want to tell this court, then, do you, Mr. Grabbe that you saw 15,000 people around your plant on that date and at that time; is that true?

A. Are you speaking—

Mr. Jaburek: May I suggest—

A. —of a specific minute?

Q. (By Mr. Nicoson) I am talking about the hour of 11:00 o'clock on July 22, 1935.

Mr. Jaburek: Just a moment. May I suggest, Mr. Examiner, that the witness has answered that question, and now counsel is merely arguing with the witness.

Mr. Nicoson: No, he has not answered the question. I am simply trying to find out how he made his observations—

Mr. Jaburek: Your question was—

Mr. Nicoson: He said that he looked at them.

Mr. Jaburek: The question was, "Do you want to state" so-and-so.

Trial Examiner Lyons: Yes, that is correct. That is the question you asked. You asked if he wanted to tell "this court"—

Mr. Jaburek: Yes.

Trial Examiner Lyons: —which I would take to mean—although that is what you said—does he want to tell the 450 Board.

I assume that is what was meant.

Mr. Walker: I take it there is not very much question but what there were large crowds around there from time to time.

Trial Examiner Lyons: The one question may be answered, but it seems to me that the ground has been pretty well covered.

Mr. Nicoson: I think so too.

Q. (By Mr. Nicoson) Now, Mr. Grabbe, you testified I believe, that you resumed operations on the 23rd of July, 1935.

Is that right?

A. We did.

Q. And also that you received about three thousand applications for employment. Is that right?

A. We received about three thousand applications up to approximately August the 15th.

Q. And then on August the 15th, I believe you testified that, to your own personal knowledge, there were 240 former employes in the plant?

A. That is correct.

Q. And that of that 240, there were about 25—

A. Twenty-five office people.

Q. Office people?

A. Yes, sir.

451 Q. And how many were of the official family?

A. Do you mean, of the balance?

Q. Yes.

A. About 25.

Q. And how many of the remainder were former employes—were striking employes?

A. I heard your question, but I do not understand what you mean by "striking employes."

Q. How many—

A. (Continuing) I do not know whether they were striking or not. Some may have been, and some may not have been.

Q. How many of the remaining 190 employes on August the 15th, 1935, were employes who had left work and gone on strike on March the 23rd, 1935?

A. 190 of them were former employes.

Q. Were those 190 employes employed in your factory on March the 23rd, 1935?

A. So far as I know; yes, sir.

Q. Well, how far do you know about that?

A. From a check-up on the records.

Q. Well, did you not testify here a little while ago that you had made your own personal observations in and around the plant?

A. That is correct.

Q. All right. Now, which did you do, make your own 452 personal observations in and around the plant, or check up on the records?

A. Both.

Q. You did both?

A. Yes.

Q. And all of those 190 employes that you are testifying concerning, were all people who were in your employ on March the 23rd, 1935, is that right?

A. They were.

Q. None of them had been in your employ prior to March 23rd, 1935, but not in your employ on the 23rd of March?

A. They had all been in our employ prior to March 23rd, 1935—yes, sir.

Q. Some of those people had previously worked for you, and had resigned prior to March 23rd, 1935—or left the service of your company for various reasons prior to March 23rd, 1935; is that not true?

A. What people are you talking about, now?

Q. The 190.

A. No.

Q. Did you have in your employ, in the plant, on the 15th day of August, 1935, a man by the name of Joe Carter?

A. Yes.

Q. Was that man in your employ on the 23rd day of March, 1935?

453 A. No.

Q. So that what you have just said, then, about the 190, is not true, that they were all in your employ, is it?

A. Mr. Carter is not included in the 190.

Q. Who is Mr. Carter?

A. Superintendent of the power house, chief engineer.

Q. And was he so employed on March the 23rd?

A. He was not.

Q. Did you have in your employ a man by the name of Homer Barley on August the 15th, 1935?

A. What was that name?

Q. Homer Barley.

A. Are you sure that you have that man's name right?

Q. I asked—

A. Isn't it Homer Barnett?

Q. I have asked you the question, if you had a man by the name of Homer Barley in your employ on the 15th day of August, 1935?

A. I am trying to get your question correctly in mind, that is all.

Trial Examiner Lyons: Well, the question is simply this: he is asking if you had, or if you know whether you had a man by that name in your employ on August the 15th, and if you do not know, then you may so!

A. Then, I don't know.

454 Q. (By Mr. Nicoson) How many other people were in your employ on March the 23rd—or, rather on August the 15th, 1935, that you do not know?

Mr. Jaburek: That is objected to.

Trial Examiner Lyons: Well, now—

Mr. Jaburek: Counsel is simply arguing with the witness, Mr. Examiner.

Trial Examiner Lyons: I think the question assumes something that has not been testified to, Mr. Nicoson.

Mr. Nicoson: No.

Trial Examiner Lyons: He does not say that he did not know any of them. He has simply said that he does not know a man that name.

Mr. Nicoson: Well, I am trying to find out how many more he does not know, by that name, or any other name.

Mr. Jaburek: Well, now—

Mr. Nicoson: He has come in here and stated—

Mr. Jaburek: You are simply arguing with him.

Mr. Nicoson: (Continuing) —that these people were in his employ on March the 23rd, and that they left, and on August the 15th they came back.

Trial Examiner Lyons: But he has not said that he knew them all by name. He has simply said that he knew them—all as employees.

Mr. Nicoson: Well, then, he followed that up by saying that he knew them because he had made a check-up of the books, in addition to making his own personal observations, as he said; and if there was any more positive information, he could have gotten it, and he should have gotten it, because he, according to his testimony, did make observations, and also a check-up of the records, to know who was working up there.

Trial Examiner Lyons: Well—

Mr. Nicoson: That was his testimony.

Trial Examiner Lyons: —of course, you are asking him now as to his present recollection of what the situation was on August the 15th; and I understand him to say he figures that they had 190 people there who were former employees, and that, to assist him in determining whether or not they were former employees, he at some time made a check-up of the books.

Now, it does not necessarily follow from that, that he can come along and give the names of everybody who were there on that date.

Mr. Jaburek: And even on that date, if the Examiner please, he may have recognized some of them by sight, and yet not know their names.

Trial Examiner Lyons: You have a right, of course, to test the recollection of the witness by the customary methods.

Mr. Jaburek: Yes.

456 Trial Examiner Lyons: But it seems to me that this is going a little too far.

Mr. Nicoson: Let me have that exhibit which was marked for identification, please.

Mr. Jaburek: Which one?

Mr. Nicoson: The announcement.

Q. (By Mr. Nicoson) Mr. Grabbe, I show you this paper which has been marked as respondent's exhibit No. 17, for purposes of identification.

A. Yes.

Q. And ask you to examine it.

A. Yes, sir.

Q. That is the announcement that you testified was placed in the newspapers by your company, is it not?

A. Yes, sir.

Q. What caused that announcement?

Mr. Jaburek: Just a moment. I do not think that is a competent question, Mr. Examiner. It is too general, in the first place, and it calls for the conclusion of the witness, in the second place.

Mr. Nicoson: He most certainly knows why he put that in the newspapers.

Trial Examiner Lyons: Well, that would open up a pretty wide field, because what causes any announcement may run too far back, and it might open up too wide a field.

457 It seems to me that that question ought to be excluded, and that you can reach the same point in a different way.

Mr. Nicoson: I will withdraw it.

Q. (By Mr. Nicoson) What was the purpose of the announcement?

Mr. Jaburek: Well, now, that is objected to. I think the document speaks for itself.

Mr. Nicoson: Well, now, it is not in evidence yet, so I do not know what it speaks for.

Mr. Jaburek: Well, it says what it is, and it will be in evidence.

Trial Examiner Lyons: You may ask this witness what part he had in drawing that up, and examine him as to what may have been meant by certain statements in it, or anything of that sort.

But on the question as to what caused it, I think that should be excluded.

Q. (By Mr. Nicoson) Did you have any part, Mr. Grabbe, in the preparation of this announcement?

A. I did.

Q. I would like to direct your attention to the second paragraph of the announcement, which reads as follows:

"The company thanks those disinterested and generous individuals and groups who have so kindly offered their time for meetings intended to terminate the strike."

458 And ask you to explain what that sentence—why that sentence was inserted.

Mr. Jaburek: Now, just a moment. That is objected to, Mr. Examiner, as irrelevant and immaterial.

On the face of it, I think it shows that they were disinterested persons, possibly volunteers who thought that they might bring about an end to the controversy.

Trial Examiner Lyons: Well, I do not think that any prolonged discussion is necessary in this connection. I cannot see the relevancy of it. Of course, I want to extend all possible liberty on cross-examination, but introducing a new subject like that under the guise of cross-examination, I believe is going a little too far.

Mr. Nicoson: Well—

Trial Examiner Lyons: Unless you can show some further materiality to it.

Mr. Nicoson: They have not yet introduced this in evidence, but I have been assured by counsel that it will be introduced in evidence, and I think that I should have the right to inquire into it at this time, just as I would at that time. I think we have the right to inquire into the meaning of it, or why it was so worded.

I think that I have the right to examine this witness as to his knowledge of its preparation, and why it was placed 459 in the newspapers, and what was intended to be conveyed, and what result was expected to be obtained from it.

Mr. Jaburek: Well, I submit, Mr. Examiner, that is simply going pretty far.

Trial Examiner Lyons: Of course, it has not as yet been offered in evidence.

Mr. Nicoson: Well, counsel—

Trial Examiner Lyons: But I suppose there is no harm—
Mr. Nicoson: —says that it will be offered.

Mr. Jaburek: It will be offered in evidence.

Mr. Nicoson: If it is not, I will offer it in evidence myself.

Trial Examiner Lyons: I suppose there is no harm in referring to it. Let me see it.

(The exhibit was examined by the Trial Examiner.)

Trial Examiner Lyons: If there are any statements of fact in there that you think are not so, Mr. Nicoson, you may inquire. You may ascertain the basis of the veracity or lack of veracity; but to go into the mental operations which may have resulted in the insertion of a certain sentence seems to me to be going too far.

Mr. Nicoson: All right. Note my exception, please.

Trial Examiner Lyons: The record will show your exception.

Q. (By Mr. Nicoson) Mr. Grabbe, directing your attention now, to the date of on or about the 23rd day of July, 1935, did you have a conversation with Messrs. Richardson and Sheck?

Mr. Jaburek: That is objected to,—

Mr. Nicoson: For what reason?

Mr. Jaburek: —as not proper cross-examination.

Trial Examiner Lyons: On what date, Mr. Nicoson?

Mr. Nicoson: July the 23rd.

Mr. Jaburek: That is not proper cross-examination, if the Examiner please.

Trial Examiner Lyons: Is that not the date on which it has already been shown that Mr. Sheck and Mr. Richardson talked with members of the union?

Mr. Jaburek: With members of the union, yes, sir; and that was gone into over my objection.

Trial Examiner Lyons: That was permitted, subject to the ruling that they must show, before the conclusion of the

case, that there was some communication of that to the company.

Mr. Jaburek: Yes.

Trial Examiner Lyons: (Continuing) And some message back, accounting for any message back that they may have brought.

Mr. Jaburek: Yes.

Trial Examiner Lyons: Now, I take it that this is the time, and this is only for the purpose of showing that connection.

461 Mr. Jaburek: But it is not proper cross-examination,

Mr. Examiner. There was nothing even touched on in the direct examination of this witness regarding Richardson or Sheek, and, therefore, it is not proper cross-examination.

Trial Examiner Lyons: Oh, I think it is true that this witness did not testify to that conversation on his direct examination, but counsel is entitled to show by any witness who is able to state just what the connection between those two men and the company was.

If counsel has finished his examination of this witness on all other matters, there is no reason why he cannot proceed with this matter.

Mr. Jaburek: And call him as his own witness, does the Examiner mean?

Trial Examiner Lyons: Well, I do not suppose we are going to be technical about that.

Mr. Jaburek: Well, I would like to have my objection entered on the record.

Trial Examiner Lyons: It may be entered.

Mr. Jaburek: (Continuing) To this witness being asked any questions regarding Richardson or Sheek upon his cross-examination, on the ground that it is not anything that was brought out on the direct examination of this witness.

Trial Examiner Lyons: Well, it is not my policy to limit cross-examination in that way. If counsel has finished 462 his cross-examination, and will say so, the objection will be disposed of, if counsel is willing.

Mr. Nicoson: I have nothing further.

Trial Examiner Lyons: If counsel is willing to proceed, after all of the other matters have been fully covered, the objection will be disposed of.

Mr. Nicoson: I have no further questions on other matters, but I want to go into this thing, and if counsel insists,

I will be glad to call the witness as my own witness, if I have to.

But I do want to examine him about it.

Trial Examiner Lyons: Well, it is only a matter of—well, you would be entitled to examine the witness on that subject, of course, if you wish. Now, if the objection is made that it disturbs the order of respondent's evidence in presenting its case, I will sustain the objection until after the respondent has finished his case, with the understanding that Mr. Grabbe will be here at all times to be recalled to the stand.

Mr. Jaburek: We will have him here.

Trial Examiner Lyons: Then, I will direct that that examination may be taken up at a later period.

Mr. Nicoson: Well, does counsel wish me not to proceed with these questions then—

Mr. Jaburek: Why do you not reserve that—

463 Mr. Nicoson: I was just inquiring.

Mr. Jaburek: —until we get through.

Mr. Nicoson: All right.

Mr. Smith: Nothing further.

Mr. Jaburek: I want to ask one or two further questions on redirect.

Redirect Examination.

Q. (By Mr. Jaburek): Mr. Grabbe, you testified that on July the 20th, 1935, or maybe it was the day before, or the day after, in answer to a question as to whether it was daylight or dark at 11:00 o'clock p. m., on that date, it was dark.

There was flood lights at your plant installed on that date, were there?

A. Yes.

Q. They were in operation at that hour—

Mr. Nicoson: Now, just a moment. What is that?

Mr. Jaburek: The date that you talked to the witness about, July the 20th or 21st.

Mr. Nicoson: Well, now, you had better make up your mind whether it was July the 20th, or July the 21st. We want to know the date. They may have been there on one day, or they may have put them up the next day.

Trial Examiner Lyons: Well, rather than search the record to find out what date it was that he was talking about, why not just ask the witness to describe just what the conditions were on those dates with regard to lighting at the plant at 11:00 o'clock p. m., and then we will have it.

Q. (By Mr. Jaburek): With reference to flood lights having been installed at your plant: on what date were those so installed?

A. They were operating on July the 20th.

Q. At what hour of that day?

A. At dark.

Q. And continuously through that night?

A. Continuously.

Q. And on the following day, July 21st?

A. They were turned out at day-break.

Q. And they were turned on again at night-fall, were they?

A. Yes.

Q. In the evening?

A. And every night thereafter.

Q. And kept on during the night hours?

A. Exactly.

Mr. Jaburek: That is all.

Mr. Nicoson: That is all.

Mr. Smith: Nothing further.

Mr. Jaburek: Just a moment. Judge Hilleary here suggests that possibly you might desire to have him put those figures into the record at this time. Supposing you do that now, if you wish.

465 Mr. Smith: I think that would be desirable.

Mr. Jaburek: Because Mr. Grabbe would like to get back to his office this afternoon, to do a little work.

Trial Examiner Lyons: Well, do you mean that you will allow Mr. Smith to examine him now?

Mr. Jaburek: Yes.

Trial Examiner Lyons: And then let Mr. Nicoson examine him?

Mr. Jaburek: If he wishes, yes.

Trial Examiner Lyons: All right.

466 *Cross-Examination (Continued).*

Q. (By Mr. Smith): Mr. Grabbe, you testified that the raw materials which come into your plant are kept for a certain length of time.

How long was that?

A. The average time is two and a half to four months.

Q. And that, I take it, is just long enough to keep a sufficient reserve on hand?

A. Yes, sir—to supply the needs.

Q. And your finished products are kept on hand for approximately about the same period of time, are they, two and a half months—

A. To four months.

Q. I take it that is just long enough to keep a supply on hand, to supply the market demand?

A. Not necessarily to supply the market demand, no, sir, although you might interpret it as meaning that.

It is to give us a fair stock on hand in order to ship merchandise, based upon normal demands, and not abnormal demands.

Q. I see. Now, you have prepared, have you not, a statement concerning both the incoming and out-going shipments?

A. Yes, sir.

Q. To and from the Columbian Enameling & Stamping Works?

A. Yes, sir.

467 Q. It has been admitted by stipulation that the majority of the raw materials actually going into and becoming part of the finished product, are obtained from points without the state of Indiana.

Now, suppose you refer to your memorandum, and state in your own way what those raw materials are, without any particular reference to volume, and from whence they are obtained?

A. The raw materials that we use are steel—

Q. Is that sheet steel?

A. Yes.

Q. Yes?

A. Wire—

Q. Can you state—

A. Bail wire. That is a technical term.

Q. Will you state at this point where that steel is obtained?

A. Principally from Gary.

Q. Gary?

A. Yes, sir.

Trial Examiner Lyons: Where?

A. Gary, Indiana.

Q. (By Mr. Smith): Any other places?

A. That is the principal source of our raw material supply, and we get at least 90 per cent from that source.

Q. By "raw material", in that instance, you mean sheet steel?

A. Yes, sir.

468 Q. About what percentage, if you can state approximately—

Trial Examiner Lyons: Did you say, 90 per cent?

The Witness: I would say, 90 per cent.

Mr Smith: Yes.

The Witness: If you wish that accurately, we can give it to you from our records.

Trial Examiner Lyons: Well,—

Mr. Smith: I think that is sufficient.

Trial Examiner Lyons: That is all right.

Mr. Smith: Yes.

Trial Examiner Lyons: Unless counsel wants it a little more accurately, it is all right with me.

Q. (By Mr. Smith): Continue with your raw materials.

A. I mentioned bail wire.

Q. Yes.

A. Various enameling materials.

Q. (By trial Examiner Lyons): Bail wire from where?

A. The bail wire, I believe comes from Chicago.

Q. (By Mr. Smith): Chicago?

A. Yes.

Q. (By Trial Examiner Lyons): How do you spell that?

A. B-a-i-l.

Q. That is the wire of which the bails are made?

A. Yes.

Q. You do not mean baling wire, that they use on bales
469 of hay?

A. No, sir.

Q. Most of that comes from Chicago, you say?

A. Yes, sir: I believe it comes from Chicago.

Q. All right. Can you give us the percentage—

A. No.

Q. —that you receive in pounds?

A. No, sir. It is small.

Q. And most of it—and there is not a very great amount
of that wire used, I take it?

A. No, sir. In proportion to the total raw material that
we use, it is a very small percentage.

Q. All right.

Mr. Smith: Now, pass to the next item.

A. Enameling materials, representing chemicals, like feldspar, which comes from North Carolina; borax, which comes from California—

Q. (By Mr. Smith): Is the borax one of the enameling materials?

A. Yes, it is.

Q. Proceed.

A. Soda ash, from Michigan; and cryolite (spelled by the witness kryolith)—which is shipped from Baltimore, Maryland, but comes originally from Greenland.

Q. (By Trial Examiner Lyons): That is, the person 470 or firm from whom you buy it is located in Baltimore?

A. Exactly.

Q. And he gets it from Greenland; is that it?

Trial Examiner Lyons: Proceed.

A. Silica sand from Illinois; tin oxide from Ohio; fluor-spar from Illinois; ball clay from Kentucky; China clay from Florida; antimony oxide through New York from China; and then sulphuric acid from Indiana and/or Illinois.

Q. (By Mr. Smith): Can you give us any percentage there, approximately?

A. Do you mean, a split between the two?

Q. Yes.

A. No, sir; I cannot just here at this time, but if you want it, I can get it for you.

Do you want it?

Mr. Smith: Well, I think not. Can you give the approximate figures?

A. No.

Q. You cannot?

A. No.

Mr. Smith: All right.

Trial Examiner Lyons: I did not know that there were so many states in the union represented.

The Witness: There are a good many.

471 Trial Examiner Lyons: Had you finished your answer to the pending question?

Q. (By Mr. Smith): Is that all?

A. Oh, I beg your pardon. Then, there is wrapping paper.

Q. Well, now, before we get to wrapping paper, Mr. Grabbe.

A. Yes?

Q. I wanted to have first in one group all the raw materials that actually become a part of your finished product.

A. Oh.

Q. Have we covered all of those?

A. That actually become a part?

Q. Yes.

A. Now, you mean, that become merged—

Q. Yes.

A. —into something?

Q. The pot or pan.

A. Now, you understand that these enameling materials all become merged into the enamel?

Q. Yes, that is true.

A. They lose their identity.

Q. Right.

A. (Continuing): Even as coal loses its identity in giving us energy.

Q. But your coal goes into heat.

A. Yes.

472 Q. And I am interested particularly in the clay, and in the soda ash, and so forth and so on.

A. Well, all of the materials that I have mentioned lose their identity.

Q. Well, I am not interested in the fact that they lose their identity.

A. I see.

Q. But just in the fact that they go to make up, and become a part of, the finished product?

A. I see.

Q. Now, have we covered all of those?

A. No, we have not.

Q. What else is there?

A. There would be wrapping paper, and labels, and cartons.

Q. Well, I am not interested in those.

Is there anything else?

A. You would not be interested in the cleaning materials that are used?

Q. Yes, I would be later on.

A. (Continuing): In the pickling of the ware?

Q. Yes, but—well suppose you continue in your own way, then.

A. Well, in mentioning the steel, and the chemicals that go to make up the prepared enamels, and the bail wire and bail wood, and the labels and wrapping paper, I have mentioned the major materials that go into the product itself as such.

Q. All right. Are there any other raw materials, now?

A. That are used in processing?

Q. Yes.

A. Yes.

Q. Name them.

A. That would be fuel in the entire plant, whether it is used for producing heat, or for whatever other purpose it may be used; including coal and oil.

Q. Where do you obtain that?

A. Indiana.

Q. It all comes from Indiana?

A. Yes.

Q. Is that all?

A. And the cleaning materials that are used in our so-called pickling department.

Those materials come from Indiana, although some of them probably come from outside, from other states.

Q. Now, then, I think that you have some further information on raw materials, together with the tonnage.

A. I have.

Q. Supposing you just refer to your memorandum Mr. Grabbe, and give us that information for the record in your own way.

A. I have here the pounds of inbound materials by states from January the 1st, 1935, to December the 9th, 1935.

474 Q. All right. You may proceed with your statement.

A. There are twenty-one states involved. Do you want to take them all down?

Q. Yes, I would like to have that.

Trial Examiner Lyons: Just read them in.

Mr. Smith: Yes.

Trial Examiner Lyons: Rather than put that in as an exhibit.

Mr. Smith: Yes, I would rather have him read them into the record.

The Witness: Shall I leave off the hundreds, and just make it in even thousands?

Mr. Smith: Yes, that will be sufficient.

The Witness: Is that all right?

Trial Examiner Lyons: Yes, that will be all right.

A. Arkansas, 25,000 pounds. California, 326,000. Connecticut, 1,000 pounds. Georgia, 2,000 pounds. Illinois, 1,557,000 pounds. Indiana, 22,713,000 pounds. Kentucky, 63,000 pounds. Louisiana, 5,000 pounds. Massachusetts, 3,000 pounds. Maryland, 11,000 pounds. Missouri, 95,000 pounds. Michigan, 164,000 pounds. New Jersey, 9,000 pounds. New

York, 22,000. Nebraska is under 1,000 pounds—632 pounds. North Carolina, 225,000 pounds. Ohio, 431,000 pounds. Pennsylvania, 929,000 pounds. Virginia, 42,000 pounds. West 475 Virginia, 698,000 pounds. Wisconsin, 43,000 pounds. Making a grand total of 27,363,636 pounds.

Q. (By Mr. Smith): And of that grand total you have 22,113,000 that came from Indiana; is that correct?

A. Well, no. I thought that I had given you the figure of 22,713,000.

Mr. Smith: Yes, I think that is right.

Trial Examiner Lyons: That is the figure I got.

Mr. Smith: That is right.

The Witness: Yes.

Q. (By Mr. Smith): And of the 22,713,000 can you give us approximately what part of that in coal?

A. No, sir; I cannot give that, even approximately, but if you wish it, I can get you the exact figures, however.

Q. I thought you had that figure there.

A. No, I have not.

Q. (By Trial Examiner Lyons): Do you have it lumped into coal—or fuel?

A. Yes.

Q. You get oil from Indiana?

A. Yes, sir; we do. I have it here in just the one figure.

* Q. (By Mr. Smith): And you do not know what percentage of that is coal?

A. No, sir; I do not, but I can get that information for you if you wish it.

476 Q. All right.

A. You wish the Indiana figure broken down, do you, into its component parts?

Q. Yes, if that is possible.

A. It is possible.

Mr. Smith: I would like to have that.

Trial Examiner Lyons: I would like that also.

The Witness: Very well.

Q. (By Mr. Smith) Now, then, as to the finished products of the Columbian Enameling and Stamping Company: You manufacture, I believe, enameled and stainless steelware.

A. We do.

Q. What are your principal finished products?

A. Well—

Q. You have kitchenware, have you not?

A. Utensils, domestic utensils for the home.

Q. Yes.

A. Hospitalware, hotel and restaurant ware.

Q. Yes.

A. Photographic trays and supplies; and specialized products of one kind or another for chemical laboratories; and stainless steelware for hotels and restaurants.

In addition to that, we have some incidental products, like wall tile and roof shingles; both made of enamel.

Q. I believe you have prepared a statement showing 477 outgoing shipments of finished products by volume, and to what destinations.

A. I have.

Q. Would you give us that information for the record at this time.

A. This is a list of finished products shipped from January the 1st, 1935, to December the 9th, 1935, showing in pounds the shipments made during that period to the United States by states.

If you will permit, I will just read the thousands again.

Q. Yes, just read it into the record.

A. And omit the hundreds.

Trial Examiner Lyons: Yes.

A. Alabama, 38,000 pounds. Arizona, 11,000 pounds. Arkansas, 13,000 pounds. California, 495,000 pounds. Canada—well, Canada, 4,000 pounds. Colorado, 28,000 pounds. Connecticut, 28,000 pounds. Delaware, 195 pounds. Florida, 15,000 pounds. Georgia, 48,000 pounds. Idaho, 1,000 pounds. Illinois, 478,000 pounds. Indiana, 220,000 pounds. Iowa, 144,000 pounds. Kansas, 56,000 pounds. Kentucky, 229,000 pounds. Louisiana, 47,000 pounds. Maine, 10,000 pounds. Maryland, 223,000 pounds. Massachusetts, 31,000 pounds. Michigan, 90,000 pounds. Minnesota, 230,000 pounds. Mississippi, 10,000 pounds. Missouri, 172,000 pounds. Montana, 2,000 pounds. Nebraska, 97,000 pounds. Nevada, 4,000 pounds. New Hampshire, 12,000 pounds. New Jersey, 25,000 pounds. New Mexico, 4,000 pounds. New York, 646,000 pounds. North Carolina, 15,000 pounds. North Dakota, 1,000 pounds. Ohio, 336,000 pounds. Oklahoma, 24,000 pounds. Oregon, 114,000 pounds. Pennsylvania, 226,000 pounds. Rhode Island, 8,000 pounds. South Carolina, 11,000 pounds. South Dakota, 6,000 pounds. Tennessee, 94,000 pounds. Texas, 115,000 pounds. Utah, 3,000 pounds. Vermont, 4,000 pounds. Virginia, 13,000 pounds. Washington, 75,000 pounds. West Virginia, 16,000 pounds.

Wisconsin, 61,000 pounds. District of Columbia, 14,000 pounds.

Making a grand total of 4,549,695 pounds.

479 Q. Now—

A. (Continuing) Now your figures will not foot exactly that.

Trial Examiner Lyons: No.

The Witness: Because—

Trial Examiner Lyons: Because you have left out the hundreds.

The Witness: Because I have left out the hundreds, yes, sir.

Mr. Smith: Yes.

Q. (By Mr. Smith) How does your sales branch operate, Mr. Grabbe?

A. Well,—

Q. That is, do you have sales offices outside of this particular territory?

A. Yes, sir, we do. We have three sales offices.

Q. Where are they located?

A. One is located in New York; one is in Chicago; one in Los Angeles.

Q. Are most of your sales made direct to the consumer, or do you make sales—

A. No, sir, practically none of our sales are made direct to the consumer.

Q. You make your sales to wholesalers and distributors, is that it?

A. Yes, sir. I might say that practically all of our 480 merchandise, all of our product, finished product, is sold to legitimate distributors.

Q. Through your sales' offices in the various cities—the three cities which you have named?

A. Principally through the Terre Haute office.

Q. But they do make sales through those offices, do they not?

A. They do make a few sales through those offices, yes, sir.

Q. What are those offices maintained for?

A. The New York office and the Chicago office are maintained for—principally for the convenience of customers who may come from other parts of the country to visit those metropolitan centers.

Q. The contact with the customer is made at those places, is that it?

A. No, not necessarily.

Q. Well,—

A. (Continuing) The contact with those customers is usually made by either the Terre Haute salesman, or the salesmen in whose territory those customers have their places of business.

Q. Well, do I understand you to say that your offices in Chicago, New York and Los Angeles are just visiting places in which to welcome the customers?

A. Yes, they are that, and then in addition to that they take care of the business—not all of the business, but some of the business in their own cities.

481 For example, the New York office takes care of some of the New York customers.

Q. Yes.

A. And likewise the Chicago office takes care of some of the Chicago customers; and likewise the Los Angeles takes care of some of the Los Angeles customers.

But they do not take care of all of the customers in their cities. Some of those, the volume accounts, the large accounts, are taken care of by the Terre Haute office.

Q. Approximately how many salesmen are connected with the New York office?

A. Two.

Q. And the Chicago office?

A. One.

Q. And the Los Angeles office?

A. One.

Q. To what extent do you advertise your products?

A. Very little.

Q. In local newspapers, or outside newspapers and magazines?

A. About the only advertising that we do, occasionally we have an ad in a trade journal.

Q. Which has a universal subscription, is that right?

A. I believe so.

Q. What is the relative size of your business in the enameling and stamping industry?

482 A. Well,—

Q. That is, is it a medium sized plant, or a large plant, or is it a small plant?

A. With respect to what?

Q. With respect to other plants in the industry; is it an ordinary sized plant, or what?

A. Well, are you speaking about volume now, or about the size of the plant, or what?

Q. I am talking about the production, the number of employes, and the amount of business that you do.

A. As far as the size of the plant itself is concerned, we are one of the largest in the industry—so far as the size of the plant is concerned, that is, the acreage covered, and the buildings.

Q. Well, I am speaking now of your production more than anything else, of course.

A. Production?

Q. Yes, your production, and the number of employes. From that standpoint how do you rank?

A. Oh, we are just one of the "also rans".

Q. What do you mean by that?

A. We are not a very outstanding manufacturer in the industry.

Q. Well, do you manufacture as much finished product as the average plant in that business?

A. Oh, no.

483 Q. You do not?

A. Much less.

Q. Do you have any competition with other enameling companies in the state of Indiana?

A. Yes, sir, we have competition with—I do not know how many of them, but there are many competitors who sell these products in Indiana.

I can name you several of them.

Q. Well, suppose you name us some.

A. There is Fletcher, of West Virginia: there is the Canton Stamping & Enameling Company at Canton, Ohio. Then there is the National, and Gender, Paeschke & Frye—

Q. Where located?

A. Fletcher is located at Dunbar, West Virginia—

Q. Well, confine yourself to Indiana first.

A. Well, I think your question—

Trial Examiner Lyons: Well, in his answer to the question, the witness—

The Witness: —I think your question was, where are these plants located?

Trial Examiner Lyons: (Continuing) —the witness was talking about competition in sales, in Indiana. Did you mean, competition in manufacture?

Mr. Smith: Yes, I meant competition in the manufacture, in Indiana.

484 Trial Examiner Lyons: Did you ask him how many other plants there were in Indiana? That is, manufacturing the same kind of goods—

Mr. Smith: How many other plants are there in the state of Indiana?

Trial Examiner Lyons: Manufacturing the same kind of goods—is that right?

Mr. Smith: Yes, manufacturing the same kind of goods.

The Witness: Oh, I misunderstood.

Mr. Smith: And offering competition to your plant?

The Witness: I misunderstood your question.

So far as I know, there is not any other plant in the state of Indiana that manufactures the same type or kind of goods that we manufacture.

Q. (By Mr. Smith) All right. Then just continue to name those which you started out to name, and state where they are located.

A. Well, do you want merely those competitors which sell in the state of Indiana?

Trial Examiner Lyons: Yes.

Mr. Smith: Yes. I want to get those now.

Trial Examiner Lyons: Go right ahead, now, and let us have them.

The Witness: Why, that list would include Fletcher of West Virginia; the Canton Stamping & Enameling Company at Canton, Ohio; the National Enameling & Stamping Company at Milwaukee, Wisconsin; Gender, Paeschke & Frye, of Milwaukee; the Vollrath Company of Sheboygan, Wisconsin; the Polar Company of the same city; the Federal Enameling & Stamping Company of McKees Rocks, Pennsylvania; the Savery Company of New York; and the Lisk Manufacturing Company of Canandaigua, New York.

That about covers the principal competitors in the state of Indiana.

Q. (By Mr. Smith) All right. Now will you tell me just approximately about the number of employes employed by your company under ordinary operations: not the number now—

A. At what time—

Q. (Continuing) —not the number now, but when the plant is ordinary operation.

A. At what time?

Q. Say last January, or February; approximately how many employees did you have?

A. Assuming that last January or February would be normal, do you mean?

Q. Well, yes, under normal conditions.

A. Of course they were not normal.

Q. Well, we will not say January or February, but under normal conditions, approximately how many employees do you employ?

A. You realize of course, that that is a rather difficult question for me to answer.

486 Q. Possibly.

A. (Continuing) Because it all depends upon the state of the business.

Q. Well, I do not expect you to give me an absolutely accurate figure.

A. As an average I would say six hundred.

Q. That would be within one hundred.

A. Yes, sir—six hundred.

Q. All right. And under those conditions approximately what would be the amount of your payroll?

A. Approximately \$5,000 a month.

Q. All right. Now I think that is all on that point. I had one other question, however, that I wanted to ask you.

The Columbian Enameling and Stamping Company was served with a subpoena to produce its payrolls?

A. Yes, sir.

Q. Has that been done?

A. Yes, sir, I know that that was done.

Q. No, my question is, have the payrolls been produced?

A. Oh.

Q. Are they here?

A. No, sir, they have not been produced.

Q. And do I understand that the company refuses to produce those payrolls?

A. We refuse to produce them.

487 Mr. Smith: That is all.

Mr. Jaburek: Just one further question.

Redirect Examination.

Q. (By Mr. Jaburek) You answered "Yes" to a question which was put to you when Mr. Smith asked you if the trade periodical in which your ad appeared, or appears, has a universal subscription.

A. Yes.

Q. Now just what did you mean by that phrase "universal subscription"?

Mr. Smith: I meant, of a national subscription, or circulation.

Mr. Jaburek: All right.

Q. (By Mr. Jaburek) And you also testified that as far as volume of business is concerned, you are one of the "also rans"—or your company, that is, is one of the "also rans".

A. Yes.

Q. What did you mean by that phrase?

A. I meant that our volume of business is not at all large; that insofar as volume is concerned, we are one of the smallest in the industry.

Q. One of the smallest?

A. Yes.

Q. Of about how many firms?

A. Well, we have eighteen active competitors, and I 488 suppose that there are twenty-five or twenty-six in the industry.

Q. And you are one of the smallest of the twenty-six, are you?

A. And we are one of the small ones, yes, sir.

Mr. Jaburek: Off the record for a moment, if the Examiner please.

(There was a discussion off the record.)

Mr. Jaburek: May we suspend our session at this time, in order to give the witness a chance to get up those figures?

Trial Examiner Lyons: Yes, we will recess at this time until 1:45 o'clock this afternoon.

(Thereupon at 12:25 o'clock p. m., a recess was taken until 1:45 o'clock p. m.)

After Recess.

(The hearing was resumed at 1:45 o'clock p. m. pursuant to the taking of recess.)

Trial Examiner Lyons: The hearing will come to order.

WERNER H. GRABEE, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Trial Examiner Lyons: Mr. Grabbe, before we proceed with the other matters, I would like to ask you a few questions.

The Witness: Yes, sir.

Q. (By Trial Examiner Lyons) Just before recess you stated in answer to a question put to you by Mr. Smith that you—or rather that the respondent, declined or refused to 489 produce its payrolls in answer to the subpoena?

A. Yes.

Q. Were you speaking for the company when you made that statement?

A. Yes, I was.

Q. And your statement was made on advice of counsel?

A. Yes, it was.

Trial Examiner Lyons: Is the subpoena here, Mr. Smith?

Mr. Smith: Yes—the return—

Trial Examiner Lyons: The return?

Mr. Smith: Yes, it is here.

Trial Examiner Lyons: That would include the substance of the subpoena.

Mr. Smith: Yes.

Trial Examiner Lyons: I think that might be introduced into the record, just in order that it may appear what the subject matter is.

Am I correctly informed that as to matter in the subpoena other than the payroll, which was required, the stipulation is substituted for the evidence that was sought by the other request?

Mr. Smith: Yes and the company was released from producing any records other than the payroll list of respondent or the period from July 1, 1935 to November 30, 1935.

Trial Examiner Lyons: All right. With that statement you may put that into the record; and if counsel wants to see the subpoena before it is put in—

Mr. Jaburek: I assume it is the original—

Mr. Smith: Yes.

Mr. Jaburek: —of which we received a copy.

Mr. Smith: Yes.

Mr. Jaburek: Yes, that is the original.

Trial Examiner Lyons: Is the proof of service by way of registered receipt?

Mr. Smith: Yes.

Trial Examiner Lyons: Perhaps it will be stipulated that it was properly served, so that you would not have to put in that rather small piece of paper for an exhibit. The substance of the subpoena is the only thing of importance.

Mr. Jaburek: The subpoena was received by registered mail.

Trial Examiner Lyons: That disposes of that. Then if you will just put the subpoena in evidence.

Mr. Smith: Will you mark this as the next Board's exhibit number.

(The document referred to was received in evidence and marked BOARD'S EXHIBIT 24, Witness Grabbe.)

Trial Examiner Lyons: Did you care to be heard further on this matter, Mr. Smith?

Mr. Smith: No, I have no further statement.

491 Trial Examiner Lyons: Mr. Nicoson?

Mr. Nicoson: Nothing further.

Trial Examiner Lyons: That is all I have, then and you may proceed with your examination of the witness.

Recross Examination.

Q. (By Mr. Smith) Mr. Grabbe, you testified that approximately 22,713,000 pounds of material had been shipped into your plant, of shipments originating within the state of Indiana.

A. Yes.

Q. In what period was that?

A. I think I testified to that. The period was from January 1, 1935 to December 9, 1935.

Q. Yes. Now have you broken down that figure to show what materials comprised the 22,713,000 pounds?

A. I have.

Q. Will you state in your own way.

A. Of that material, coal is 20,637,000; steel is 1,164,000 pounds, cartons 835,000 pounds; miscellaneous materials 75,000 pounds; making a total of 22,713,000 pounds.

Q. Do you know what that steel is; is that the sheet steel that is used?

A. That is called enameling stock.

Mr. Smith: That is all.

Mr. Jaburek: Now, Mr. Smith, may we not have a statement in the record—

Mr. Smith: Is this for the record?

Mr. Jaburek: Yes.—Or suppose you just leave it off record for the moment, Mr. Reporter, while we discuss if the Examiner does not object.

Trial Examiner Lyons: If nobody else does, I do not.

(There was a discussion off the record.)

Mr. Smith: I have no further questions.

Mr. Jaburek: That is all.

Mr. Nicoson: I would like to ask Mr. Grabbe a question.

Mr. Jaburek: Are you calling him?

Mr. Nicoson: As my witness, yes.

Trial Examiner Lyons: Well, before you start, may I continue a little further?

Mr. Nicoson: Certainly.

Trial Examiner Lyons: With the subject we are now on.

Mr. Nicoson: Certainly.

(By Trial Examiner Lyons) Mr. Grabbe, in your plant do you have a planning department as a distinct unit?

We do not have a planning department.

By whom is the determination made as to the proportion which purchases and sales, and manufacture or production, shall bear to each other,—the ratio which they shall bear to each other.

The Production Control Department.

Q. Will you tell us what the function of the Production Control Department is?

A. The functions of the Production Control Department are to keep records of stocks, including raw material, work in process, and finished products; and also to keep records of orders, and shipments against finished stocks.

And that of course, includes sales.

Sales.

That last statement means keeping a record of the sales that are made.

Yes.

Of products that are shipped for sale?

Yes.

Now does your Production Control Department establish a schedule under which raw materials are shipped into the plant?

No, it does not.

Does your company, through its Production Control

Department, or otherwise, require persons selling goods to the company to ship them upon a fixed schedule?

A. In what sense do you mean, Mr. Examiner?

Q. That is, do you instruct them to ship in accordance with the schedule which you make, which in its turn is controlled by the Production speed in the plant, and the sales speed at the other end?

A. No.

Q. Is the reception of raw materials into the plant 494 governed in any manner, directly or indirectly by the sales volume?

A. No.

Q. How do you determine your needs as to raw material which you are about to process into finished goods?

A. All of the stocks are carried on the basis of minimums and maximums.

Q. And how is the minimum determined?

A. The minimum is determined by past experience.

Q. Does the prospect of future sales enter into that also?

A. No, sir.

Q. Well, it is your aim, is it not, to keep the unfinished goods—that is raw materials in the plant—down to the minimum which is required to keep business going; is that not true?

495 A. That depends somewhat on the materials, and it also depends of course on the use of those materials.

Q. Well, of course, you know from time to time what the proportions of those raw materials are that you need. You know how much silica you need, for example.

A. Yes, that would be known.

Q. In accordance with the soda ash and so forth.

A. Yes.

Q. And you know whether or not you are using more or less of an article, from your knowledge of your business.

A. Yes.

Q. Now, that controls it to some extent, does it not?

A. It would.

Q. Does the demand for a particular type of product react upon the proportions of raw material which you buy?

A. It would.

Q. If you have a prospect of large sales of a certain type of utensil which requires more of a certain chemical let us say than other types of utensils, you would accordingly see to it that you got into your plant a sufficient supply of the required materials—

A. No.

Q. —to keep going, would you not?

A. No, sir, not with respect to any one particular chemical.

Q. It is not drawn as fine as that?

496 A. No, sir.

Q. But you do try to keep your purchases, production and sales so synchronized that you will not be glutted at any time either with parts not ready for use, or finished material not ready for sale, will you?

A. That would be ideal, if that could be obtained.

Q. Well, that is what you aim at, is it not?

A. No, not exactly.

Q. Well, is not that really the aim of your Production Control Department?

A. Well—

Q. (Continuing) To keep everything moving through the plant?

A. It would be the aim of the ideal Production Control Department—yes, sir.

Q. Is there any spoilage of those raw materials, so that if they stay there beyond a certain time, they become useless?

A. No.

Q. None of those chemicals, for example, will deteriorate with age?

A. Within practical limits, I would say, no; that is, for the year or more that they would be in storage.

Q. I see.

A. And still be usable.

Q. Most of them would be good for about one year?

A. Yes, sir.

497 Q. And that is far beyond the time when you would normally use them, is it?

A. Well, we do store some materials for longer than one year.

Q. And, of course, those are the things which do not deteriorate very rapidly?

A. Well, none of our materials are of a perishable nature.

Q. But you are limited in space. I take it? You do not occupy any more space with material than you can reasonably use, do you?

A. Oh, yes, we do.

Q. Is that because you have an unusually large plant for your volume, or why is that?

A. It may be due to one of several reasons. We do have

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very adequate storage space. It may be because we do not want to buy less than a carload of material, or it may be because the supplier of the material would not sell less than the carload; and a carload will last for several years.

Trial Examiner Lyons: That is all. Now, Mr. Nicoson.

Mr. Nicoson: Shall I proceed?

Trial Examiner Lyons: Proceed.

Q. (By Mr. Nicoson) Mr. Grabbe, on or about the 23rd day of July, 1935, did you have a conversation with either Mr. Richardson or Mr. Sheek, concerning whom there has been testimony here?

A. I did not have a conversation with them, no.

498 Q. Did you at any time have a conversation with either of those gentlemen?

A. No.

Mr. Nicoson: That is all.

Mr. Jaburek: That is all.

Trial Examiner Lyons: That is all, Mr. Grabbe. You may step down.

The Witness: Thank you.

(The witness was excused.)

Mr. Jaburek: Call Mr. Gorby.

Trial Examiner Lyons: Be sworn.

C. B. GORBY, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Jaburek) State your full name.

A. C. B. Gorby.

Q. Your place of residence?

A. 2619 North 9th Street, Terre Haute, Indiana.

Q. Your occupation or business?

A. Executive of the Columbian Enameling & Stamping Company.

Q. And your office with that company?

A. President and treasurer.

Q. In what business is that company engaged?

A. The manufacturing of enameled ware.

Q. It has already been testified to here, has it not?

499 Q. Mr. Gorby, as to the different kinds of enameled ware that you manufacture?

A. I believe so.

Q. Now, calling your attention to July the 5th, 1934: Did you on that date have a meeting with any officials or representatives of the union, the petitioner in this case?

A. I do not remember that I did.

Q. Was there not a visit paid to your company, and an agreement left with you by someone?

Mr. Nicoson: We object to that, because it is too broad and general.

Mr. Jaburek: Well, someone from the union.

Mr. Nicoson: All right.

Q. (By Mr. Jaburek) Showing you Respondent's Exhibit No. 4 for identification, Mr. Gorby, does that now refresh your recollection or recall to you whether or not somebody called at the plant from the union on that day and left this agreement with you?

(The document was examined by the witness.)

A. Oh, I thought you were talking about 1935.

Q. No, last year.

A. Well, I do recall that that agreement was under discussion, but I cannot recall from whom it was received.

Q. Did you subsequently, on or about July the 14th, 1934, have occasion to go to Indianapolis?

A. I did.

Q. With whom did you go?

A. Why, representing the company there were Mr. Grabbe, Mr. Kelsey, Mr. William Gorby and myself; also the Scale Committee of the Enameling Union; and Mr. Breteau of the Central Labor Union.

Q. Where did you meet in Indianapolis?

A. In the office of the Labor Board.

Q. Do you mean the Indianapolis Regional Labor Board?

A. Right.

Q. Do you recall who was in charge of that office of the Board at that time?

A. Dr. Beckner.

Q. Dr. Earl Beckner?

A. I do not know his first name.

Q. Did you go to Indianapolis at his instance?

A. Yes, sir.

Q. To attend this meeting?

A. Yes.

Q. And then the Scale Committee, and Mr. Breteau you found at the meeting when you arrived there, did you?

A. Yes, sir.

Q. Showing you Respondent's Exhibit No. 4 for identification, I will ask you to state, is this the agreement that was discussed at that meeting?

(The document was examined by the witness.)

501 A. I am satisfied that it is.

Q. Then what happened after that?

A. The agreement was considered item by item, with the aid of Dr. Beckner; and a revised agreement formulated.

Q. I show you Exhibit A attached to the answer of the respondent filed in this cause, and ask you, to state if that is a copy of the revised agreement which was prepared by Dr. Beckner on that date?

A. It is.

Q. And after it was prepared, it was signed, as the names on this document indicate, was it?

A. Yes, sir.

Q. And a couple of days later there was an addition made to it with reference to the period of time it was to run, was there?

A. Yes.

Q. And that was signed in a similar way, was it?

A. Yes, sir.

Q. Now, at this meeting, Mr. Gorby, did Dr. Beckner have occasion to discuss the paragraph marked No. 10 on page 3 of the first agreement, which has been marked as Respondent's Exhibit No. 4 for identification?

A. Yes, sir. When that paragraph was taken up, Dr. Beckner took the position that that was not a fair paragraph to the company, and that the company ought not to be 502 held responsible for the results of machinery breaking down.

Mr. Nicoson: Now, if the Examiner please, in order to save time here I would like to suggest that the witness state what was said, and not what position somebody took, or anything like that.

I think we will save considerable time here if that is done.

Trial Examiner Lyons: It will save objection certainly, Mr. Jaburek.

Mr. Nicoson: I am going to be compelled to enter my objections otherwise.

Trial Examiner Lyons: If you will refrain from doing what many of us do, Mr. Gorby, characterize what was said rather than tell what was said, it would be much preferable.

You say that somebody took a position. Now, that may be your opinion. Perhaps he did, and perhaps he did not.

All that we want to know is, what did he say? So tell us as nearly as you can recall what was said.

The Witness: I see.

Trial Examiner Lyons: And we will try to figure out what position he took, if any.

Q. (By Mr. Jaburek) By the statement which you have made as to the position which Dr. Beckner took, you meant in substance that is what he said, didn't you?

A. I did.

503 Q. Now, calling your attention to November the 26th, 1934; did you attend a meeting on that date?

A. I did.

Q. Where was that meeting held?

A. In the factory office of the Columbian Enameling & Stamping Company.

Q. Who was present at that meeting?

A. The Scale Committee of the union; Mr. T. N. Taylor; Mr. Grabbe; and Mr. Kelsey.

Q. When you refer to the Scale Committee of the union, whom do you mean, Mr. Gorby?

A. If you will just let me see that agreement there, I will read the names.

Q. Do you mean the seven or eight persons whose names are attached to this agreement, Exhibit A?

A. With the possible inclusion of Mr. Brown—yes.

Q. What occasioned this meeting, or at whose request was it held, if anyone's?

A. I do not know.

Q. Mr. Gorby, was it not at the written request of the union?

A. I assume without question that it was, but I do not know.

Q. Now, I will ask you to state what happened at that meeting; what was said, and by whom it was said?

A. Well—

Q. If you—pardon me?

504 A. My remarks, as near as I can give them, on the point of an increase in wages were about as follows—or first, I might say that when I came in to the meeting, the meeting had already progressed to some extent; and Mr. Grabbe informed me that an advance of 20 per cent in wages had been requested, and also that the company agree to a closed shop.

My remarks about the wages were that we could not pay any increase in wages because we were not making a profit,

and that we could not get the customers to pay any additional, because they had no necessity for buying from us, and that if we increased our price, due to an increase in the cost of labor, they would simply buy elsewhere, and reduce the amount of employment in our plant.

I told the meeting that we would be very glad to pay higher wages, and I told them that it was within the power of the workers to increase their earnings and probably increase their rates of pay, and that they could do that by making as much of the product and as good a product as possible, which would naturally increase our business. I told them that we did sell goods at less than cost largely for the purpose of making the employment as steady as possible.

Now, on that subject I only recall one comment, or one question. Mrs. Badders wanted to know how we could sell goods at less than cost. I told her that cost was made up not only of labor and materials, but also of burden, the 505 burden being such items as insurance, and taxes, and many others, but of that class; and that we could sell goods at a loss without being actually out of pocket in money, because the burden went on just the same.

That is all I think that was said regarding an increase in wages, and I believe that there was no other comment.

Regarding the closed shop opposition, I said that we could not agree to a closed shop because we felt that it was unfair to any person who did not want to join the union. I do not recall any comments on that point.

Q. Then what was said after that, if anything, and by whom was it said?

A. Someone—I believe it was Mr. Taylor—asked if the company would agree to—or rather, if the company would give assurance that the Athletic Association would not be considered by the company as a bargaining agent.

Q. And what, if anything, was said in reply to that, and by whom was it said?

A. Well, I think that that was just about the end of the meeting, and Mr. Taylor said that things were satisfactory, and the meeting was over.

Q. But what reply was made to the question about the Employees Athletic Association?

A. Oh, that—oh, I beg your pardon.

Q. You omitted answering that.

506 A. I beg your pardon. Yes. I agreed for the company that the organization referred to would not be considered as a bargaining agent.

Q. Now, have you told us all that you can remember about this meeting, Mr. Gorby?

A. That is all I remember.

Q. For the purpose of refreshing your recollection, now, did Mr. Taylor say, after you had said what you just testified to about the closed shop and the wage increase, that then the union had no demands to make?

A. I do not recall that he did.

Q. Had there been something said about a check-off in the conversation at this meeting?

A. Not that I remember; I do not believe I heard any such thing.

Q. Now, going to June 11th, 1935, do you recall attending a meeting on that date?

A. Yes, sir.

Q. With whom did you attend the meeting on that date?

A. Messrs. Brown, Heuer and Cox; my son; and Mr. Grabbe.

Q. By your son, do you mean William Gorby?

A. I do.

Q. And he is the same man who has been referred to in this hearing also as Gorby Junior, is he?

A. Yes.

507 Q. At whose instance was this meeting held?

A. It was in response to a request by the three gentlemen mentioned, of the union.

Q. Cox, Heuer and Brown?

A. Right.

Q. Now, what was said at this meeting, and who said it?

A. Well, that is a pretty big order for me to answer, to remember all that was said, or even much of it, and who said it.

I recall that—well, I recall a question that either Mr. Grabbe or I asked, and that question was, what there was to be discussed.

I recall the reply, that it was a settlement of the strike,—and that was by Mr. Cox; and Mr. Grabbe or I asked what there was to settle.

We asked whether the wages and conditions were acceptable, and if there was anything besides the matter of a closed shop, to discuss; and we had the answer again in the affirmative from Mr. Cox, that there was—that wages were satisfactory, and that conditions were satisfactory.

Now, first cannot begin to tell you what happened, or

what was said on that day. I know the general character of their remarks—and you might just leave this off the record for a minute, until you see if it is what you want in.

Mr. Jaburek: Well—

508 Trial Examiner Lyons: No—

Q. (By Mr. Jaburek) Have you exhausted your memory about what happened, so that I may help you if I can by refreshing your recollection?

A. Well, yes. I was just trying to keep to that particular subject.

Trial Examiner Lyons: Will the testimony which you expect to elicit from this witness differ substantially from what Mr. Grabbe has already put in?

Mr. Jaburek: No, Mr. Examiner. I desire to corroborate Mr. Grabbe about this meeting of June the 11th.

Trial Examiner Lyons: Well, would not a statement to that effect suffice, then?

The Witness: I might say right here—

Trial Examiner Lyons: Just a moment. Counsel may want to cross examine, of course, and I do not want to deprive counsel of their right to cross examine by allowing you to make a statement like that. That is the only thing.

In the interest of saving time, having in mind that he would not say anything contrary, and counsel would not care to interrogate him on it, it might be desirable.

Mr. Nicoson: If we may have just a half a moment here to confer, Mr. Examiner?

Trial Examiner Lyons: Certainly.

(A short intermission followed.)

509 Mr. Nicoson: I am sorry, Mr. Examiner, but I am afraid that we cannot agree to stipulate to what Mr. Grabbe said yesterday.

Trial Examiner Lyons: Proceed.

Q. (By Mr. Jaburek) Have you exhausted your memory now, Mr. Gorby, as to what was said at that meeting?

A. Why, on that particular branch of it, not quite, no, sir.

Q. Proceed.

A. I can say that our argument against the closed shop proposition was that it was unfair, and that we did not want to be unfair to anybody, much less the people who had worked for us for a long time; and that the only advantage that it served the union, that we could see, was that it enabled them to force the collection of their dues, which was not the business of the company, and that the company ought not to

have any part in this; and further, that the organization, by their own statement, had a very large percentage of all of the workers eligible to the union already as members of the union.

Now, I can state that Mr. Cox, or Mr. Heuer, made as the argument on their side the statement that it was not fair to the members of the union to have a few people enjoying the benefits of the union, without paying dues to the union; and the statement that it would not hurt the company in any particular.

Now, those arguments were hashed over quit a number 510 of times.

Q. Anything further?

A. That is about all that I can say regarding the statements relative to the closed shop.

Q. Who first brought up the subject of the closed shop at this meeting?

A. I do not know.

Q. Was it any one of the representatives of the company, or was it someone on behalf of the union side?

Mr. Nicoson: I believe the witness has answered that question. He said he did not know.

Trial Examiner Lyons: Well, I take it that one more question to refresh his recollection will not be harmful.

A. I do not remember.

Q. (By Mr. Jaburek) Now, further for the purpose of refreshing your recollection further, Mr. Gorby, was there anything said about discrimination against employees?

A. There were no complaints as to discrimination. We stated that we would agree to take everybody back on the same terms and wages, without discrimination, but without recognition of the union.

Q. Did you make any statement about burning the plant down, or having the plant burned down at that time?

A. Well, I made a jocular statement, yes.

Q. It was jocular, was it not?

511 A. Yes. Mr. Heuer had—

Mr. Nicoson: Now, just a moment. I am going to have to object, Mr. Examiner, to the opinion of the witness about that. Let him state what was said, and let the Board—

Mr. Jaburek: That is just what we are coming to.

Trial Examiner Lyons: Yes.

Mr. Nicoson: We will let the Board determine whether it was jocular or otherwise.

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Trial Examiner Lyons: The answer to the last question which went in was "Yes." It ought to stop right there.

Now, put the next question.

Mr. Jaburek: All right.

Q. (By Mr. Jaburek) Now, Mr. Gorby, what did you say on the subject, or what did anybody else say on the subject of burning the plant down, if anything?

A. Well, Heuer stated that they were guarding the plant for me—or for us; and I made the reply—I do not know the exact words at this time—

Q. Well—

A. (Continuing)—but to the effect that we might as well let it burn down, that it was not of any use to us; and my statement was of course in jocularity.

What Mr. Heuer's was, of course, I do not know.

Q. At that time the plant was entirely closed, was it not?

A. Yes.

512 Q. Did you state on the occasion of this meeting that the plant would operate without a union?

A. No, sir.

Q. And that no union would be tolerated in the plant?

A. I did not. I never said any such thing as that.

Mr. Jaburek: That will be all.

Cross-Examination.

Q. (By Mr. Nicoson) Now, Mr. Gorby, you stated that at that meeting on November the 26th there was some discussion concerning the Athletic Association being used for collective bargaining; is that right?

A. Well—

Q. That was your testimony, was it not?

A. Well, I would not say that there was any discussion about it. There was—Mr. Taylor simply asked assurance that we would not use it as a bargaining agent.

Q. Yes.

A. And I gave him the assurance.

Q. Was there any other—

A. (Continuing) That is what I intended to say.

Q. Was there any other discussion about the Athletic Association?

A. I am almost certain that there was not—none during my presence at the meeting.

Q. Was there not some discussion concerning the 513 leasing or taking over of the—Fort Harrison County Club for the benefit of the Athletic Association?

A. I am quite certain that there was no discussion of that kind while I was there.

Q. Not in your presence?

A. No, sir.

Q. You agreed for the company that the Athletic Association would not be used for purposes of collective bargaining; is that right?

A. I did.

Q. Now, Mr. Gorby, directing your attention to June 11th, the meeting of June 11th, about which you have testified: did you not testify that you agreed to take back everybody who was out on strike—

A. Yes.

Q. —but without recognition of the union?

A. Yes.

Mr. Nicoson: Now, if the Examiner please, if counsel will permit, I would like to take the witness as my own at this time. If he has any further questions, or if anybody else has any questions, they might be disposed of now.

Mr. Jaburek: You are through with the cross examination of the witness, are you?

Mr. Nicoson: Yes, that is all I want to ask him on cross examination.

514 Mr. Jaburek: Go ahead.

(The witness was excused temporarily.)

C. B. GORBY, called as a witness for the petitioner, being previously duly sworn, further testified as follows:

Direct Examination.

Q. (By Mr. Nicoson) Now, Mr. Gorby, about the 23rd or the 24th of July, 1935, did you have a conversation with either Mr. Richardson or Mr. Sheck, labor conciliators?

A. Yes, sir.

Q. You may state what that conversation was, and who made the various statements?

A. You are asking me for something, now, that is impossible for me to state. That conversation was three hours long.

If you will ask me any specific question, perhaps I can answer it for you.

Trial Examiner Lyons: Counsel will be permitted—

Mr. Nicoson: I can ask him the questions, all right, if counsel will permit me.

Trial Examiner Lyons: I will permit you to lead him to any reasonable extent under the circumstances.

Mr. Nicoson: All right.

Q. (By Mr. Nicoson) Was there anything said at that time between you and Mr. Sheck and Mr. Richardson concerning meeting with the Scale Committee for the purpose of negotiating and bargaining?

515 A. I do not quite understand that question. About a meeting that had been held, or about a meeting that was to be held?

Q. That was to be held.

A. They asked me if I would meet with them and the Scale Committee.

Q. Did they say for what purpose they were requesting that you meet with the Scale Committee?

A. No, I do not think they did.

Q. Well—

A. (Continuing) We would know the purpose however.

Q. And what was your reply to their request, that you meet with the Scale Committee?

A. I told them that I would.

Q. You would?

A. Yes, sir.

Q. And was the meeting arranged?

A. There was not.

Q. Did you not inform the conciliators at that time and place that you would meet them with the Scale Committee on the following day?

A. No, sir, I am quite certain that that is not the case.

Q. And then did you not call them the next morning—I am just trying to refresh your recollection—by telephone, and tell them that you had changed your mind?

A. No.

516 Q. Did Mr. Richardson and Mr. Sheck arrange that meeting?

Mr. Jaburek: Just a moment. Let us hear what was said, instead of asking for the conclusion of the witness.

Mr. Nicoson: Well now, he has said that it would be quite

large order, and the Examiner said that he would permit me to lead the witness.

Mr. Jaburek: Well now, you are asking him for a conclusion. That is my only objection.

Trial Examiner Lyons: Perhaps you can ask him just as well who first talked about the meeting—

Mr. Nicoson: All right.

Trial Examiner Lyons: He, or they.

Mr. Walker: That is assuming that there was a meeting arranged.

Mr. Nicoson: All that I am trying to get at, if the Examiner please—and this may be off the record, I suggest.

(Discussion off the record.)

Trial Examiner Lyons: Proceed.

Q. (By Mr. Nicoson) Mr. Gorby, was there any meeting between you and the Scale Committee—well, strike out the question.

After you had told Mr. Richardson and Mr. Sheck that you would meet with the Scale Committee was there a meeting held?

A. There was not.

Q. Do you know why not?

7 A. Well, there was never any arrangement for a meeting; no meeting was ever arranged for.

Q. Did you have any further conversation with either Mr. Richardson or Mr. Sheck about this subject subsequent to the 23rd or 24th?

A. Sometime later, I do not know just how many days later—I could not tell you that—I called Mr. Sheck—or Mr. Richardson, and told him that I would not have any meeting with him or with the Scale Committee.

Q. And that may have been a day or so later, then, this time that we are talking about now—

A. Several days.

Q. —around about—

A. Well, it was several days later.

Q. At that time were you speaking for the company?

A. Yes.

Q. In your official capacity?

A. I took that liberty, of speaking for the company.

Q. You heard the testimony of Mr. Max Schaefer given yesterday afternoon, concerning his visit to your office, did you not?

A. I did.

Q. Was that testimony substantially correct?

A. Well, may I ask a question?

Q. I think so.

518 A. Did he say that he represented to me that he was representing the union?

Q. That he was there on behalf of the union,—I think he said were his words.

A. Well, that is all right. I think that is what he said, yes, that he was there on behalf of the union.

Q. Your company also received letters under date of September the 20th and October the 11th, from the petitioner in this case, the union; is that true?

A. It did.

Q. And was there any answer made to those letters?

A. There was not.

Mr. Nieson: I believe that is all.

Trial Examiner Lyons: Is there anything further?

Mr. Smith: Nothing further.

Mr. Nieson: That is all.

Mr. Jaburek: Are counsel through with the witness?

Mr. Nieson: Yes.

Mr. Jaburek: Are you through making your proof?

Mr. Nieson: Pardon me?

Mr. Jaburek: Are you through attempting to connect up Sheck and Richardson?

Mr. Nieson: Yes. You may renew your motion now.

Mr. Jaburek: May I repeat my motion at this time, Mr. Examiner, please.

519 Trial Examiner Lyons: Well, now, as to your motion.— how many subjects were there, that were left that way? It is always a problem, when things are left that way; you have hard work remembering what is involved.

Mr. Jaburek: Well, Sheck and Richardson were one; and Schaefer was another; and Mythen was the third.

Trial Examiner Lyons: Any others?

Mr. Smith: No.

Trial Examiner Lyons: Are those the three to whom you are addressing yourself now?

Mr. Jaburek: Yes.

Trial Examiner Lyons: Now, does it not appear as to Mythen, that Mr. Grabbe said that Mythen did come and talk to him.

Mr. Jaburek: Yes, that Mythen did come and talk to him; and we are raising no point about Mr. Mythen.

Trial Examiner Lyons: All right.

Mr. Jaburek: My motion is directed to Richardson, Sheck and Schaefer.

As far as Mr. Schaefer is concerned, I want to call the attention of the Examiner to the rather profuse manner in which the first personal pronoun was used, with not a word to show that Schaefer said anything about having been sent there by the union; and that is the controlling point.

Trial Examiner Lyons: You need not take the argument,

Mr. Reporter.

520 (Discussion off the record.)

Mr. Jaburek: If the Examiner please, the respondent moves that the testimony of Otis Cox, heretofore adduced at this hearing with reference to the government men named Richardson and Sheck, who, as has been subsequently developed are, or at that time were, conciliators for the Department of Labor, be excluded, for the reason and on the ground that in talking with Mr. Gorby on or about July the 23rd, 1935 they did not in any manner, shape or form indicate to him that they were there with a request from the union, through its Scale Committee, for a meeting between Mr. Gorby and the Scale Committee; that the testimony of Heuer, heretofore adduced at this hearing, referring to said Richardson and Sheck, also be excluded from the record, for the same reason and on the same ground; that the testimony of Heuer, heretofore adduced at the hearing with reference to Max Schaefer, be excluded from the record for the reason and on the ground that said Schaefer, when talking with Mr. Gorby, did not indicate to him in any way that he had been sent there, or authorized by the Scale Committee of the petitioner union, to ask for a meeting between the company or its representatives, and the Scale Committee, or any other representatives of the petitioner union.

Now, if I may talk about that just a little bit further, if the Examiner please, off the record.

(Further discussion off the record.)

521 Trial Examiner Lyons: I will take the motion under advisement, and decide it after I have seen the written record, and give you ample notice.

Mr. Jaburek: Is that all with the witness?

Mr. Nicoson: That is all.

Trial Examiner Lyons: You may step down.

(The witness was excused.)

Mr. Smith: If the Examiner please, may I suggest a short recess at this time?

Trial Examiner Lyons: Yes. There will be a short recess at this time.

(Thereupon a short recess was taken, after which the proceedings were resumed as follows:)

Trial Examiner Lyons: The hearing will come to order. Counsel may call his next witness.

Mr. Jaburek: Mr. Kelsey, will you take the witness stand, please.

Trial Examiner Lyons: Be sworn.

EARL KELSEY, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Jaburek) What is your full name?

A. Earl Kelsey.

Q. Your address?

A. 225 Madison Street, Terre Haute, Indiana.

522 Q. Your occupation or business?

A. I work for the Columbian Enameling & Stamping Company.

Q. How long have you been employed by that company?

A. About five and a half years.

Q. Five and a half years last past?

A. Yes, sir.

Q. You have been at this hearing since it started last Monday, have you, Mr. Kelsey?

A. Yes, sir.

Q. And you have heard your name mentioned in connection with a meeting held on November the 26th, 1934.

A. Yes.

Q. You were present at that meeting?

A. I was.

Q. And that meeting was held at the plant of the company, was it?

A. Yes.

Q. Will you briefly tell us about that meeting, stating who was present, and what was said, and by whom.

A. The Scale Committee of the union was present.—Mr. and Mrs. Badders, and Mr. and Mrs. Payton—

Q. Keep your voice up.

A. (Continuing.) Mr. Cox, Mr. Heuer, and a seventh member whose name I do not recall.

Mr. Nicoson: I cannot hear the witness.

523 Trial Examiner Lyons: Neither can I. You will have to speak a little louder.

A. And a seventh member, whose name I do not recall.

Q. (By Mr. Jaburek.) And who else?

A. For the company—pardon me. Mr. Taylor was there also, Mr. T. N. Taylor.

For the company, there were Mr. Grabbe, Bill Gorby and myself.

Q. Mr. Taylor represents the Indiana Federation of Labor, does he?

A. That is my understanding.

Q. And he was there as a representative of the union, was he?

A. Yes, sir.

Q. Now, will you tell the Examiner what was said, and by whom it was said?

A. Mr. Taylor opened the meeting, and stated that the meeting had been called because the union wanted to ask the company for a 20 per cent increase in wages, and a closed shop.

Mr. Grabbe said, speaking for the company, that the company would not grant a closed shop, because the policy of the company was that it made no difference as to what religion, or race, or affiliation or non-affiliation with any labor organization, an individual might have when it came to getting a job.

524 Mr. Grabbe further stated that the company could not afford to pay a 20 per cent wage increase at the present time—that is, at that time. Mr. Grabbe explained in detail why the company could not pay an increased wage at that time. Briefly, he stated that the company had not been making a profit because of competition in the industry. He told about the competition in the industry, and the prices that they were selling enameled ware for, which prices more or less governed our prices; and that since we could not get any more money for our product, we could not make a profit, and therefore we could not pay any increase in wages.

He also stated that—well, briefly, that is all that he said on that point.

Q. All right. Now then, what was the reply to that, if any, and by whom was it made?

A. Well then, Mr. Grabbe—or rather Mr. Gorby was called into the meeting, and Mr. Grabbe told Mr. Gorby briefly what the union had asked for.

Then Mr. Gorby briefly—or rather, Mr. Gorby said that the company could not grant a closed shop, nor could it afford to pay an increase in wages, and gave very briefly the reasons why.

Q. All right. Go ahead.

A. (Continuing.) Then at the conclusion of that, Mr. Taylor said that he felt that the committee and himself both understood the position of the company at that time, and 525 that they had no further demands to make at the time.

He also said that the company could disregard the previous correspondence on the check-off system, and the letter of the union which had reference to the Association.

Also Mr. Taylor asked the representatives of the company whether the company considered the Employes Athletic Association as a bargaining committee for working conditions, wages, hours and so forth; and Mr. Gorby stated that he would not consider the Employes Athletic Association as such a bargaining committee.

Q. All right. Now, have you told us all that you can remember?

A. Briefly, yes, sir.

Q. For the purpose of refreshing your recollection, Mr. Kelsey, did Mr. Grabbe say something about inefficient operation at high production costs?

A. Yes, he did.

Q. Will you just briefly state that.

A. As one of the reasons why the company could not afford to pay an increase, he stated that they were not making a profit, and part of the reason why they were not making a profit, he said, was that the cost analyses showed an abnormally large spoiled work loss.

I believe that the figures he gave at the time were something like \$1500 above normal in July; and he stated that 526 those—that that loss had been increasing every month since then.

Q. Now, Mr. Kelsey, I show you Respondent's Exhibit No. 1 for identification.

A. Yes, sir.

Q. That was presented at a meeting of the Scale Committee about January the 4th, 1935, was it not?

A. It was.

Q. And then on January the 21st, 1935 was there another meeting with the Scale Committee, by representatives of the company?

A. There was.

Q. Who of the Scale Committee was present at this meeting?

A. Mr. and Mrs. Payton, Mr. Brown, Mr. Hener, Mr. Cox, and I believe Mr. Redinger was at that time a member of the committee.

Q. And for the company?

A. Bill Gorby and myself.

Q. When you refer to Bill Gorby, do you mean Gorby, Jr.?

A. Yes, sir.

Q. Referred to here sometimes by the latter name?

A. Yes, sir.

Q. Now, will you briefly state what was said at this meeting and by whom?

A. Bill Gorby conducted the meeting. He said that the 527 company had its answer to give to the Scale Committee, the answer of the company to the proposal of the union given the company in the meeting of January the 4th.

Bill Gorby read to the meeting the company's letter to the employes of January the 21st, excepting the introductory and the concluding paragraphs. In other words, he read the proposals of the union, followed individually by the answer of the company.

Q. I show you Petitioner's Exhibit No. 1, being the letter of January 21st, 1935, a printed letter.

That is the letter to which you refer, is it?

A. It is.

Q. And that is what he read, omitting the first and last paragraphs, as you have just stated, is it?

A. It is.

Q. Now, will you go ahead and state what further transpired, if anything, at that meeting?

A. After reading the letter Bill Gorby explained to the committee that copies of the letter were being mailed to each employe in the factory; and the members of the Scale Committee—Mr. Hener, and Mrs. Payton I recall especially—asked repeatedly if the company would not mail the letter:

that is, if it would not mail copies of the letter to its employees.

Bill Gorby replied that the company felt that it was one—that this subject was one which should be placed before 528 all of the employes, and he said that the company felt that it was only fair that the letters should be mailed out, and that they would be mailed out.

There were requests—the committee requested several times that the letters be not mailed, but Bill Gorby's reply was not changed in that respect.

I think that is about all.

Q. In substance, that is all that happened at that meeting, is it?

A. Yes, sir.

Q. Now, Mr. Kelsey, calling your attention to February the 7th, 1935: there was another meeting on that date with the Scale Committee, was there not?

A. There was.

Q. Were you present at that meeting?

A. Yes.

Q. Will you tell the Examiner briefly who was at that meeting?

A. The same members of the Scale Committee as had attended the January the 21st meeting: and Mr. Grabbe, Bill Gorby and myself, for the company.

Q. Will you state briefly now what was taken up at this meeting, and what was said, and by whom it was said.

A. The members of the Scale Committee mentioned quite a number of complaints having to do with factory operation, and as each complaint was mentioned individually, Bill Gorby discussed it with them, Bill Gorby conducting the company's side of this meeting; and a decision was either reached on the complaint at that time, or in several cases Bill Gorby said that he would look into the matter and reply to them later, where it was necessary to do so.

Q. Was the matter of two hours pay for the powerhouse shutdown taken up?

A. Yes.

Q. What was said about it?

A. Mr. Cox said that a few of the employes had asked the committee to ask the company for two hours pay to those employes for the day when the employes reported to the

plant and were not allowed to work because the powerhouse had broken down that morning.

Bill Gorby said that the company did not feel that the employees had the two hours pay due them, because it was an unavoidable breakdown of the machinery, and that—well, to repeat Bill's expression, he said, "You would not expect us to pay you two hours, or for two hours time, if the plant burned down, would you?" And the committee themselves agreed that they would not.

Q. Well, there was some mention made that the matter had been discussed at the time the agreement was drafted on July the 14th, 1934, at Indianapolis, was there not?

530 Bill Gorby repeated that in the original proposal submitted to the company on July the 5th there had been a paragraph in there providing that the employees be reimbursed for time lost due to breakdown of machinery and so forth, and that that had been deleted from the agreement, and that the July 14th agreement which was finally signed, did not contain that provision.

Q. That is, when you say it had been deleted, it was contained in the agreement that was proposed by the union?

A. Right.

Q. But was not included in the agreement that was drawn by Dr. Beckner and signed by the parties?

A. Right.

Q. And as you stated, the several complaints that had been taken up were disposed of in one way or another?

A. They were.

Q. And they were all of a more or less minor character, I take it, were they?

A. Yes, sir.

Q. What you would call routine stuff?

A. Yes, sir.

Q. Now, calling your attention to February 22nd, 1935, and the meeting on that date of the Scale Committee and the management: you were present at that meeting also, were you?

A. I was.

531 Q. Who else was present on that occasion?

A. The same members of the Scale Committee were present, who had attended the two previous meetings which I have testified concerning; and Bill Gorby and myself were present for the company.

Q. What came up at this meeting?

A. The subject of two hours pay was again brought up.
Q. And what was said about that, on this occasion?

A. Mr. Cox stated that the body of the union was not satisfied with the decision, or the statement of the company—that is, I am referring to Bill Gorby's statement which he had made at the previous meeting.

He said that the body of the union was not satisfied with the answer of the company on the point of the two hours pay, and that the union felt that the company did owe the employes two hours pay for the day of the shut-down.

Bill Gorby replied much the same as he had before, and stated that the only thing further that could be done in the matter was to refer it to Mr. Grabbe and Mr. Gorby, Sr.

Q. Is that about all that transpired at this meeting, to the best of your recollection?

A. Well, there were several other subjects similar to that, discussed.

Q. Of what you would call a routine and minor character, I take it?

532 A. There was a repetition—excuse me,—that is, there was a little discussion on some of the same subjects which had been brought up in the February 7th meeting.

Q. And again, was there some sort of an answer given disposing of those matters?

A. There was.

Q. Now, going to March 5th, 1935, was there another meeting on that date?

A. Yes.

Q. At which meeting you were present—

A. Yes.

Q. And Mr. Grabbe was present?

A. Yes, sir.

Q. Who was present from the union?

A. The same members of the Seale Committee as had previously attended.

Q. All right. Now, what was said at this meeting, and by whom was it said?

A. At the March 5th meeting the Seale Committee then asked Mr. Grabbe about the matter of the two hours pay, stating that they felt that the contract—that is, the July 14th agreement stated that the employes were entitled to two hours pay.

Mr. Grabbe stated that the company did not feel that the July 14th agreement provided for two hours pay, and re-

peated to them the incident at Indianapolis, where Dr. 523 Beckner had stated that that provision should not be placed in the agreement.

Q. And then was there some discussion about the letters—

A. Yes.

Q. (Continuing) —and some sort of an understanding reached regarding them?

A. Yes, sir, there was. The Scale Committee told Mr. Grabbe that they did not like—that the union did not like to have the company send out letters to all of the employees, letters which contained subject which the Scale Committee felt were strictly union business.

There was quite some discussion of that, and finally Mr. Grabbe said that it was not the intention of the company to mail out letters to all of the employees where strictly union business was concerned, but only where subjects of interest to all of the employees were involved.

Mr. Grabbe also stated that he would show the Scale Committee copies of any proposed letters for the future, and discuss those letters with the Committee, with the idea of modifying anything to which they might object, if he could do so.

Q. And that disposed of that matter at that time, did it?

A. It did.

Q. Then there was a meeting on March the 11th, 1935, was there not?

534 A. Yes, sir.

Q. At which Mr. Grabbe was present?

A. Yes, sir.

Q. Mr. Gorby and yourself?

A. Yes, sir.

Q. For the company.

A. Right.

Q. And who from the union?

A. The Scale Committee members, the same members as had attended previously.

Q. Anyone else?

A. And Mr. Taylor was present.

Q. What happened there?

A. Mr. Taylor opened the meeting by stating that he had asked that this meeting be arranged so that he might discuss with the officers of the company, the answer of the company to the proposal of the union of January the 4th.

Mr. Taylor asked Mr. Grabbe if he, Mr. Grabbe, was will-

ing to discuss the matter; and Mr. Grabbe stated that the answer of the company was final.

At this point Mr. Taylor prepared to leave, and Mr. Grabbe stated that he did not mean that he did not want to discuss the matter; that the answer of the company was final, but that so long as the people were assembled, there, they might as well discuss it.

535 They then read each point of the proposal and discussed the answer which the company had given. After all of those points were discussed, Mr. Taylor asked for a summary of the answers of the company to the proposals, and that was given; and Mr. Taylor ended the meeting by stating that he would do his best to explain to the union body the way the company felt about each individual point which was explained.

Q. And there was discussed the provision for laying off suspended workers, was there not?

A. There was.

Q. What was said about that?

A. The union asked several times—that is, the members of the Scale Committee asked several times what objection the company would have to agreeing to lay off a member of the union who might have become suspended.

The answer of the company to that question was that the company felt that such a matter was strictly a matter of union business, and that the company did not care to be involved in it.

Now, calling your attention, Mr. Kelsey, to the time when the plant reopened on July 23rd, 1935; after the plant had reopened state whether or not you were detailed to assist in the employment department?

A. Yes, sir.

Q. For a period of time.

536 A. I was.

Q. Will you state how long you were in the employment department at that time?

A. About two weeks.

Q. From about what date until what date?

A. From about July the 26th, 1935 until about August the 8th, or August the 10th.

Q. Do you recall, or do you know approximately the number of persons who applied for work during about that period—

A. Well—

Q. —or, during that period?

A. During the period while I was there, we took applications of between 1,500 and 2,000 people.

Q. And how many persons were there who applied for employment on an average in one day?

A. The number would vary all the way from—oh, from 50 to 250, on the heaviest days.

Q. Until those applicants were admitted into the office, into the employment office, where did they stand?

A. Well, they stood in line outside of the gate office, on the sidewalk, between the gate office and the main office.

Q. And when there was a crowd there of from 200 to 250 people, how long a line did they form?

Mr. Nicoson: We object to that, Mr. Examiner. Counsel is assuming that there was a line of 200 to 250.

537 Mr. Jaburek: Oh, no. There has been evidence to show that that was the fact. The witness said that there were from 50 to 250, on the heaviest days.

Trial Examiner Lyons: Do you mean, the total amount on any one day?

Mr. Nicoson: Counsel asked him—

Trial Examiner Lyons: They may have come in groups of 10, 15 or 20, or something of that sort. You may elicit anything competent on that point.

Q. (By Mr. Jaburek) How many persons did you see there at one and the same time?

Mr. Nicoson: That is objected to for the reason that it is altogether too indefinite.

Q. (By Mr. Jaburek) (Continuing) Seeking employment.

Mr. Nicoson: Also, we still object to it because it is still indefinite. We do not know whether that means on July the 22nd, or December the 5th, or when.

Mr. Jaburek: All right.

Q. (By Mr. Jaburek) During the period when you were in the employment office, Mr. Kelsey, how many times did you observe at one and the same time, 150 or more applicants waiting to enter the employment office?

A. Four times.

Q. And on those occasions, before they entered the office, where did they stand?

538 A. They stood on the sidewalk, between the gate office and the main office.

Q. And how long a line did they form?

A. About 60 to 70 feet.

Q. And did they stand singly, or in some other fashion?

A. Well, right around the entrance to the gate office, there was no formation to it; they just stood in a crowd; but extending from immediately next to the gate office down the sidewalk, they were—oh, two or three deep.

Q. And it was the practice in that office to—of you and the other gentlemen who were working there, to take them one at a time, was it?

A. Yes, sir.

Q. And interview them?

A. Yes.

Q. And have them fill out application blanks; is that true?

A. Yes, sir.

Q. Now, how late in the day were the applicants—were the persons applying for employment received there?

A. Up until we closed at five o'clock.

Q. And on how many different days during the period which you have mentioned, did persons apply for employment after four o'clock p. m.?

A. After four o'clock?

Q. Yes.

539 A. About four days.

Q. It is true, is it not, that there were times when you were not able on some occasions to talk to all of those persons, and they had to be sent away after five o'clock, and told to come another day?

A. That is true.

Q. Now—

Mr. Nicoson: Just a moment. That is objected to for the reason that it calls for a conclusion.

Trial Examiner Lyons: I think it is decidedly leading.

Mr. Jaburek: Well, possibly it is, Mr. Examiner, but I am trying to hurry the thing along.

Trial Examiner Lyons: (Continuing) It may be stricken for that reason.

Q. (By Mr. Jaburek) Did you ask—

Mr. Nicoson: Why not let the witness go, and you get on the stand and tell it, in the interest of time.

Trial Examiner Lyons: Well, when counsel leads the witness, and nobody objects, the Examiner lets it go.

Mr. Jaburek: Yes.

Trial Examiner Lyons: But when there is an objection made, the Examiner must recognize it.

Q. (By Mr. Jaburek) State whether or not you interviewed all persons who appeared at or near the employment office of the plant, applying for work on the particular 540 days that they so appeared there?

A. We did not.

Q. What happened on those occasions when you did not interview them all on the day that they applied for employment?

A. Well, at five o'clock in the evening we closed up and told them that they would have to come back tomorrow morning—the next morning.

Q. And there were several such days, were there?

A. Yes, sir.

Q. Several days when that happened?

A. There were.

Q. When you talked with those applicants for employment, was anything said about the union, or unionism?

Mr. Nicoson: Just a moment. That is objected to for the reason that it is leading.

Trial Examiner Lyons: Well, it seems to me—

Mr. Nicoson: Counsel is simply putting the words into the mouth of the witness again.

Mr. Jaburek: I am not telling him what to say.

Trial Examiner Lyons: No. Counsel simply asked the witness whether anything was said.

Mr. Jaburek: I am calling the attention of the witness to a particular matter.

Trial Examiner Lyons: The answer may be yes or no.

I do not think that is a leading question. It does not suggest the answer.

I am inclined to admit it.

Q. (By Mr. Jaburek) You may answer the question, Mr. Kelsey.

The Witness: What is the question, please?

Mr. Jaburek: The reporter will read it.

'The question referred to was read by the reporter as above recorded.)

A. No.

Mr. Jaburek: That is all.

Trial Examiner Lyons: Cross examine.

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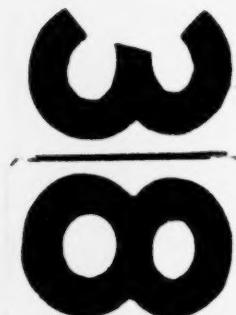
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Cross-Examination.

Q. (By Mr. Nicoson) Is Bill Gorby, Jr. still in the employ of the firm?

A. He is not.

Q. Do you know when he left the plant?

A. Do I know when he left the plant?

Q. Yes.

A. Well, to the best of my knowledge he left when we all did, on March the 23rd, 1935.

Q. Did he came back—

A. (Continuing) That is, left the factory.

Q. And did he come back on July the 23rd—

A. I didn't see him.

Q. —when the plant reopened?

A. I didn't see him.

542 Q. Has he been in the employ of the company since July the 23rd, if you know?

A. No, sir.

543 Q. Do you know why he did not return?

Mr. Jaburek: That is objected to.

A. No, sir.

Trial Examiner Lyons: Well—

Mr. Jaburek: That is objected to as calling for the conclusion of the witness.

Trial Examiner Lyons: I cannot see any materiality in that question.

Mr. Nicoson: That is all.

Mr. Smith: No questions.

Mr. Jaburek: That is all.

Trial Examiner Lyons: You may step down.

(The witness was excused.)

Mr. Jaburek: Mr. Hawkins?

Mr. Hawkins: Yes, sir.

Mr. Jaburek: Will you take the stand?

Trial Examiner Lyons: Come right up here forward, Mr. Hawkins, and be sworn, please.

HAROLD HAWKINS, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

- Q. (By Mr. Jaburek) What is your name?
- A. Harold Hawkins.
- Q. Your address?
- A. 1808 North 27th street.
- 544 Q. Terre Haute?
- A. Terre Haute, Indiana.
- Q. Your occupation, or business?
- A. Foreman at the stamping works.
- Q. For the Columbian?
- A. Yes.
- Q. The Columbian Enameling & Stamping Company?
- A. Yes, sir.
- Q. How long have you been employed by that company?
- A. It will be eleven years the 9th of January.
- Q. You were there at the time the strike was called, were you?
- A. Yes, sir.
- Q. Last March?
- A. Yes.
- Q. And you returned last July?
- A. Yes, sir.
- Q. And have been working there since?
- A. Yes, sir.
- Q. Do you know Paul Steurwald?
- A. Yes.
- Q. Did you have any conversations with him during the months of May and June of 1935?
- A. Yes, sir.
- Q. About how many conversations?
- 545 A. I would say, five or six.
- Q. Where did those conversations take place?
- A. At my brother-in-law's house, in west Terre Haute.
- Q. Now, will you briefly tell us what was said, and by whom, at these several conversations?
- A. Well—
- Q. Were they all of a general nature?
- A. Yes, sir.
- Q. Just go ahead and state what was said, and by whom?

A. Well, he came down to see me, to just talk, I think, at first, more than anything else, and then he broached the subject about coming back to work; and then he got to talking about how hard up he was, for another time or two, and followed that on up until he wanted to go back to work.

Q. Well, now, when you say "followed that on up until he wanted to come back to work"—

A. Like the rest.

Q. (Continuing) —what did he say, and what did you say?

A. There was a movement on foot at that time for us all to come back to work.

Trial Examiner Lyons: No.

Mr. Niceson: I ask that be stricken out.

Trial Examiner Lyons: Strike it out. As I recall it, the other witness said that Mr. Hawkins came to his house and talked with him.

546 Mr. Jaburek: Yes.

Trial Examiner Lyons: Well, now Mr. Hawkins says that the talks were at somebody else's house.

Mr. Jaburek: Yes.

Trial Examiner Lyons: And that Steurwald came there.

Mr. Jaburek: Yes, to his brother-in-law's house.

Trial Examiner Lyons: Of course, that is a rather direct contradiction of a substantial part of what Steurwald said. Do you feel that you need any more than that, to sustain your position?

Mr. Jaburek: Well—

Trial Examiner Lyons: (Continuing) I am not passing upon the veracity of either of these men, you understand.

Mr. Jaburek: No.

Trial Examiner Lyons: But is there anything in the conversation which will be different from what Steurwald said?

Mr. Jaburek: Well, I would like to bring out a little more about what was said in the conversation.

Trial Examiner Lyons: Very well. You may proceed.

Q. (By Mr. Jaburek) What else was said, if anything?

A. Nothing of any importance that I can remember at this time.

Q. Well, to refresh your recollection, was there something said about a grocery bill?

547 A. Yes, sir.

Q. Who said it?

A. He did himself.

Q. What did he say?

A. He told me that they was in bad circumstances, and he showed me a bill out of his pocket of between \$90 and \$100, a grocery bill that he owed.

Q. Did you go to Steurwald's house at any time?

A. I went there once after we went back to work.

Q. About when was that?

A. That was a very short time after we went back to work.

Q. Was that sometime around the end of the month of July, 1935?

A. Yes, sir.

Q. Now, on that occasion, what did you say and what did Steurwald say?

A. Well, his mother came to the door, and I talked to her.

Mr. Nicoson: I object.

A. (Continuing) He wasn't there.

Mr. Nicoson: That is objected to.

Trial Examiner Lyons: Well, what he said to the mother—

Mr. Nicoson: That is objected to, what he said to his mother, who came to the door.

Q. (By Mr. Jaburek) You did not talk with Steurwald?

548 A. No, sir.

Q. Did you ever talk with Steurwald about coming back to work, at his home?

A. No, sir.

Mr. Nicoson: Just a moment. The question is objected to as leading.

Mr. Jaburek: That was his testimony.

Mr. Nicoson: Counsel is leading the witness again.

Mr. Walker: He has a right to a categorical denial.

Mr. Nicoson: Well, he asked the witness about the conversation, and then he—

Trial Examiner Lyons: It seems to me there is no better way to contradict something that another witness has stated, than to ask the witness flatly, did he do this, or did he say that?

Mr. Nicoson: He started out to relate the conversation, and now he abruptly leaves the conversation and starts off on something else.

Trial Examiner Lyons: He asked him if he talked to him at his house—is that the point?

Mr. Jaburek: Yes.

Mr. Nicoson: That is what he said, that he had a conversation at this house.

Trial Examiner Lyons: No—at Steurwald's house.

Mr. Nicoson: Yes.

549 Trial Examiner Lyons: Well, so far there has not been any conversation.

Mr. Nicoson: He asked him if there was, and he said yes.

Mr. Hilleary: He said that the conversation was with the mother.

Trial Examiner Lyons: Yes. I do not think that he has yet said that he did not talk with Steurwald at Steurwald's house. Ask him that question,—did he ever talk with Steurwald at Steurwald's house.

Q. (By Mr. Jaburek) Will you answer that?

Mr. Nicoson: Is that the question, now?

Mr. Jaburek: That is the question.

A. No, sir.

Q. (By Mr. Jaburek) Did you ever say anything to Steurwald about his securing any preference in the event that he returned to the employ of the company?

A. No, sir.

Q. Did you say anything to him about the union during the month of July?

A. I do not believe that I did, but I wouldn't be—I don't remember it that well.

Q. Now,—

A. (Continuing) If I even talked to him during the month of July.

550 Q. Well, toward the end of the month of May or June of 1935?

A. Oh, I presume that we did talk something, but I do not remember what was said.

Q. Do you know a man by the name of Wyrick?

A. Well, I have met him.

Q. Did you call upon him at his home?

A. Yes.

Q. At any time?

A. Yes, sir.

Q. When?

A. Well, I don't know exactly the date, the exact date—

Q. Well—

A. (Continuing) —but it must have been along about the first of July, I guess.

Q. Were you alone, or was someone with you?

A. I was with Mr. Cusick.

Q. Now, what was said on that occasion and by whom?

A. Well, I never said—but very little to the man, because I didn't know him. I never saw him. He was on nights, and I didn't get acquainted with him. But I do remember something being said when Mr. Cusick and I went in there, and I don't know whether I asked the question about him coming back to work or not, but something was said about that effect.

Q. Did you promise him a better job if he came back to work?

551 A. No, sir.

Q. Did you hear Cusick say to him that he would get a better job if he came back to work?

A. No, sir.

Q. Did you make any remark to the effect that there would be no union labor in the plant any more?

A. No, sir.

Q. Did Cusick make that remark—

A. No, sir.

Q. —in your hearing?

A. No, sir.

Q. Did you say that that would be his last chance to come back to the employment of the company?

A. No, sir.

Q. Did you hear Cusick say that?

A. No, sir.

Mr. Jaburek: That is all.

Trial Examiner Lyons: Just a moment, Mr. Hawkins. Counsel may want to ask you some questions on cross-examination.

The Witness: Excuse me.

Mr. Nicoson: No, I do not think so.

Mr. Smith: Nothing.

Trial Examiner Lyons: All right. That is all. Are 552 you going to put on quite a number of witnesses now, counsel?

Mr. Jaburek: Yes.

Trial Examiner Lyons: It might save a little time, if they were all sworn at once, at this time.

Mr. Jaburek: Why, yes. All of you witnesses who have been called, stand up.

Trial Examiner Lyons: Raise your right hands, please.
(The witnesses were sworn collectively.)

Trial Examiner Lyons: Now, you may all be seated, and come forward as your names are called.

Mr. Jaburek: I want to recall Hawkins for another

moment or two. Just come back, Hawkins, for another question.

Redirect Examination.

Q. (By Mr. Jaburek) Do you know a man by the name of Hartzler?

A. Yes, sir.

Q. What is his first name?

A. Paul, I believe.

Mr. Jaburek: Is that correct, do you know?

Mr. Nicoson: Yes.

Mr. Jaburek: Pardon me?

Mr. Nicoson: Yes.

Q. (By Mr. Jaburek) Did you have a talk with him?

A. Yes, sir.

553 Q. When?

A. It was along in July sometime.

Q. Of 1935?

A. Yes, sir.

Q. Were you alone, or was some one with you?

A. I was with Mr. Cusick.

Q. Where was the conversation?

A. At his home.

Q. Now, what was said, and by whom?

A. I believe that we asked him about—if he wanted to come back to work, that we were going to try to get back to work.

Q. What did he say?

A. He said, no.

Q. Did you tell him that he had to decide before Monday—

A. No.

Q. —whether he wanted to come back or not?

A. No.

Q. Was anything else said on this occasion?

A. Oh, we might have talked some further there, but I don't think there was anything particular mentioned.

Q. Was it with reference to coming back to work?

A. No.

Mr. Jaburek: That is all.

Mr. Nicoson: Just a moment.

554 Trial Examiner Lyons: Just a moment, Mr. Hawkins.

Cross-Examination.

Q. (By Mr. Nicoson) Are you employed by the Columbian Enameling and Stamping Company at this time?

A. Yes—no, not at that time.

Q. When did you go back to work for the Columbian Enameling and Stamping Company?

A. On the 23rd, I think, of July, or the 24th, or something like that. Along about the latter part of July, I don't remember the exact date.

Q. About the time that the plant went back to work, was it not?

A. Yes, sir.

Q. And the conversation, your last conversation with Wyrick was after the plant had resumed operations, was it not?

A. No, sir.

Q. I will ask you if you did not testify that you had your conversation with Wyrick along about the latter part of July?

A. Well, I believe it was the first part of July, I said.

Q. I will ask you if it was not about the 26th of July—

A. No.

Q. —on Friday.

A. No, sir. I couldn't recall the date, to be exact, but—

Q. So you do not know?

A. No.

555 Q. During your call at Wyrick's home, did you go inside?

A. Yes, sir.

Q. Did Mr. Cusick go inside?

A. Yes, sir.

Q. You were both together—

A. Yes.

Q. —all the time, were you?

A. Yes, sir.

Q. Now, when did you have your conversation with Hartzler?

A. That was right about the same time, I believe.

Q. Along in the latter part of July?

A. No—yes; the one I had with him—

Q. After the plant reopened?

A. No.

Q. Do you know just when it was?

A. No.

Q. You are not certain—you do not know about that?

A. No, sir.

Q. It may have been before, or after?

Mr. Walker: Well, now—

A. It wasn't after.

Mr. Walker: That is not what he said.

Mr. Nicoson: Are you making some sort of an objection, Judge?

Mr. Walker: You heard what I said.

556 Trial Examiner Lyons: If it was something intended for me, I did not hear it, and I am the only one who should be addressed by counsel on either side, if there is an objection.

Q. (By Mr. Nicoson) How many people did you go to see, Mr. Hawkins, and ask them if they wanted to go back to work for the company?

Mr. Jaburek: Now, just a moment. That is objected to as not proper recross-examination. Here this witness has been asked to rebut certain testimony on direct, and he has been limited to that; and now counsel begins to question him about something else.

Trial Examiner Lyons: Well—

Mr. Jaburek: And that is not proper.

Trial Examiner Lyons: I think that, in order to test the recollection, or the veracity of the witness, counsel may be allowed, in a hearing such as this, to ask him about other similar matters. What is the question, please, Mr. Reporter? Read the question and we will see if it is objectionable for any other reason.

(The question was read by the reporter as above recorded.)

A. I don't know.

Q. (By Mr. Nicoson) Well, were those the only three?

A. No, I saw more than three.

557 Q. Yes. The truth of the matter is, you called on quite a number, did you not, Bud?

A. Well, I don't know what you would call "quite a number."

Q. Well, it was more than three, was it not?

A. Yes.

Q. Was it a hundred?

A. No, sir; I don't think so.

Q. Was it 50?

A. I don't know.

Q. You have no recollection—

A. No.

Q. Of how many people it was?

A. No.

Q. It might have been 100 then?

A. It might have been, yes.

Q. Might have been 200?

A. It couldn't be.

Q. The truth of the matter is, you made quite extensive calls around to all of the striking employes, to get them to go back to work; is that not right?

A. Yes, sir.

Mr. Nicoson: That is all.

Redirect Examination.

Q. (By Mr. Jaburek) Did anyone—at whose instance did you make those calls?

A. My own, I guess.

558 Q. Did any one from the company ask you to make them?

A. Nor sir.

Mr. Jaburek: That is all.

Recross Examination.

Q. (By Mr. Nicoson) Did any one from the company know that you were making those calls?

Mr. Jaburek: Just a moment.

A. I don't know.

Mr. Jaburek: Just a moment. How would he know whether any one from the company knew or not?

Mr. Nicoson: Well, I am testing the credibility of the witness, and I have the right to ask him that kind of a question, to find out whether he is telling the truth or not.

Mr. Walker: He has answered the question.

Trial Examiner Lyons: Of course, you cannot ask him, in any event, a question that he is not competent to answer. Whether they knew or not he could only know by what he said to them, and by what they said to him; and I think you ought to limit it to that,—did he report to them; did he tell them what he was doing; did they say anything to him after he reported.

Mr. Nicoson: I will withdraw the question.

Mr. Walker: He has answered that he did not know whether the company knew anything about it or not.

Evidence on Behalf of Respondent.

559 Q. (By Mr. Nicoson) How come, Bud that you went around and made all of those calls?

A. I was wanting to go back to work.

Q. You wanted to go back to work?

A. Yes, sir.

Q. And I suppose you thought that if you could get enough of them to go back to work, you could go back to work?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And that was your only reason?

A. Yes, sir.

Q. Acting purely by reason of your own selfish motives, you went out and solicited all of those people to go back to work; is that right?

A. Yes, sir.

Q. And there was no other reason?

A. No.

Mr. Nicoson: That is all.

Mr. Jaburek: That is all.

Trial Examiner Lyons: Step down.

(The witness was excused.)

Mr. Jaburek: Miss Elliott.

LOU ELLIOTT, called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

560 *Direct Examination.*

Q. (By Mr. Jaburek) What is your full name?

A. Lou Elliott.

Q. Where do you live?

A. 410 North Sixth Street, Terre Haute, Indiana.

Q. Your occupation, or business?

A. Registered nurse.

Q. By whom are you employed?

A. By the Columbian Enameling and Stamping Company.

Q. How long have you been employed by that company?

A. Seven years last November.

Q. Calling your attention to the month of June, 1935, did you call at the homes of any persons who had been in the employ of the company prior to March of 1935?

A. Yes.

Q. Among others, did you call at the home of Paul Steurwald?

A. Yes, sir.

Q. Where did he live when you called upon him?

A. In West Terre Haute.

Q. With his mother?

A. Yes.

Q. And some other member of the family?

A. Yes, sir.

Q. You had known him for sometime, had you?

A. I knew him as an employe, yes.

561 Q. Now, when you called upon him—or, when did you call upon him first?

A. About June 3rd.

Q. And what did you say to him, and what did he say to you on that occasion?

A. He told me that he didn't have any money to pay his bills, that there was only himself of the family working, and that they had no money for food, or anything, and they needed help.

Q. What did you do?

A. I gave him some money.

Q. How much did you give him?

A. Five dollars.

Q. Did you call upon him thereafter?

A. I did.

Q. When?

A. About June the 13th.

Q. And on that occasion what did you say to him, and what did he say to you?

A. Well, he seemed anxious to get back to work at that time.

Q. Well, will you just state what he said to you and what you said to him?

A. He said he would like to go back to work.

Q. Anything else?

A. That he needed the money very much.

562 Q. What did you say?

A. I told him that I would be glad if he could go back to work, too.

Q. Did you pay him any more money on that occasion?

A. I did.

Q. How much did you give him on your second visit?

A. Five dollars.

Q. Did you see him thereafter?

A. No.

Q. And those two payments of five dollars each, were the only money that you gave to him, were they?

A. Yes, sir.

Q. Now, at whose request—strike that out.

At whose direction did you pay him this money?

A. Well, I do not quite understand your question.

Q. Well, will you explain how you happened to be there; how you happened to call on him?

A. I was told by a former employe that he needed money very badly.

Q. And had you been giving relief to other persons?

A. Yes, sir.

Q. To how many other persons did you give relief?

Mr. Nicoson: We object to that, if the Examiner please, for the reason that there is nothing before this Board in that connection.

563 Trial Examiner Lyons: Well, I think—

Mr. Jaburek: It is the same proposition—pardon me!

Trial Examiner Lyons: I think you have put in by that witness that she went there, not at the direction of anybody with the company, but upon a request received from a third person, and that after she gave him five dollars after certain conversation on two occasions.

Now, to what extent she may have done similar things in other places, seems to me to be of no importance here.

Mr. Jaburek: I think that is correct, and I will withdraw the last question.

Q. (By Mr. Jaburek) State whether or not you had any discussion with him about the union on either of these two occasions?

A. No, I did not.

Q. Did you say to him, or intimate to him that this money was being given to him in consideration of his returning to work?

A. No, sir.

Q. What was the motivating cause of your giving him this money?

Mr. Nicoson: Just a moment. That is objected to, for the reason that it calls for a conclusion.

Trial Examiner Lyons: Yes.

Mr. Jaburek: That is all.

564 Mr. Nicoson: Just a moment.

Cross-Examination.

Q. (By Mr. Nicoson) Miss Elliott, was that your own money that you gave to Mr. Steurwald?

A. No.

Q. Where did you get the money?

A. The company gave it to me.

Q. Was it in cash, or check?

A. It was in cash.

Mr. Nicoson: That is all.

Redirect Examination.

Q. (By Mr. Jaburek) What was said to you, Miss Elliott, at the time that this money was given to you by the company?

A. That it—

Mr. Nicoson: Just a moment. We object to that, if the Examiner please.

Mr. Jaburek: Oh, no. Counsel brought that out in his cross-examination, and now I have the right—

Mr. Nicoson: Unless she states, by whom.

Trial Examiner Lyons: No. I do not think I can permit you to introduce a possible self-serving statement in that manner. The circumstances under which she gave the money are clear, and that is sufficient.

Mr. Jaburek: All right. That is all.

Trial Examiner Lyons: Is that all with the witness?

565 Mr. Nicoson: That is all.

Trial Examiner Lyons: You may step down.

(The witness was excused.)

Mr. Jaburek: Charles Gossage.

CHARLES GOSSAGE, called as a witness for the respondent, testified as follows:

Direct Examination.

Q. (By Mr. Jaburek) What is your name?

A. Charles Gossage.

Q. Your address?

A. 1624 Seventh Avenue, Terre Haute, Indiana.

Q. Your occupation, or business?

A. Foreman at the Columbian Enameling and Stamping Company.

Q. You were there prior to the strike in last March, were you?

A. Yes, sir.

Q. And you returned again in July?

A. Yes, sir.

Q. Do you know one Royer?

A. Yes, sir.

Q. Did he work in your department during the six months preceding March 23rd, 1935?

A. Yes, sir.

Q. And did he work—for how long a time prior to March 23rd, 1935, did he work in your department?

566 A. Why, he worked in our department, but he didn't work for me.

Q. He was not under your direction—

A. No.

Q. —or control?

A. Not at that time.

Q. By "that time," what time do you mean?

A. Why, about eight or nine months before the strike, I refer to.

Q. And during the past—or the preceding eight or nine months before the strike, he did not work under your direction?

A. He did not.

Q. Did you during that period have any complaint from him?

A. No, sir.

Q. Did you have any complaint from any one else regarding from anyone else regarding him?

A. No, sir.

Mr. Jaburek: That is all.

Mr. Neeson: No questions.

Trial Examiner Lyons: That is all.

(The witness was excused.)

Mr. Jaburek: Mr. Monninger.

LOUIS MONNINGER, called as a witness for the respondent, testified as follows:

567

Direct Examination.

Q. (By Mr. Jaburek) What is your name?

A. Louis Monninger.

Q. Your address?

A. 1225 North 13th street.

Q. Terre Haute, Indiana?

A. Yes, sir.

Q. Your occupation or business?

A. Foreman at the Columbian.

Q. Foreman at the Columbian Enameling and Stamping Company?

A. Yes, sir.

Q. How long have you been employed by that company?

A. Twenty-two years last July 7th.

Q. And you were there at the time the strike was called last March, were you?

A. Yes, sir.

Q. And you came back to work again, when the plant reopened in July?

A. Yes, sir.

Q. Do you know Royer?

A. Yes, sir.

Q. What is his first name?

A. Jesse.

Q. Did he work in your department?

A. Yes, sir.

568 Q. Prior to the strike?

A. Yes, sir.

Q. For how long a period of time did he work in your department prior to the strike?

A. Well, for about a year before the strike, he worked for me.

Q. Did you ever have—did you ever receive any complaint from him?

A. Why, only one.

Q. With reference to what?

A. That was where he thought he was getting a little bit the worst of it, and that was on account of not being changed around enough; and I went and saw the committee, and all

of the boys together, and talked it over with him, and I changed him around, and rotated him, and that gave him a little better break.

He thought he was getting a little the worst of it, but that was all—a little the worst of it on the chain.

Q. There are several jobs on the chain, are there not?

A. Yes, sir; there are four jobs on the chain.

Q. Yes.

A. (Continuing) And I rotated him around; and we had table jobs, too.

Q. And did you put him on the table, too?

A. Yes, sir.

569 Q. In how many different positions altogether did you put him during the past eight or ten months?

A. Well, there were only five places that I could put him into; one on the table, and four on the chain.

Q. What kind of work did he—

Mr. Nicoson: Just a moment. That is objected to as having nothing whatever to do with this case before the Board at all—

Mr. Jaburek: Just a moment.

Mr. Nicoson: —as to what kind of work it was.

Trial Examiner Lyons: It seems to me that that is getting a little far afield, counsel.

Mr. Jaburek: Well, with reference to the—

Trial Examiner Lyons: (Continuing) This witness was put on principally, as I understand it to contradict something that was said by a man named Royer, who said he was not getting a break.

Mr. Jaburek: Yes.

Trial Examiner Lyons: Now, this man has said that he gave him a break.

Mr. Jaburek: Yes.

Trial Examiner Lyons: I do not know as it makes much difference one way or the other—

Mr. Jaburek: I will withdraw it.

Trial Examiner Lyons: —whether he did or not.

570 Mr. Jaburek: I will withdraw it.

Q. (By Mr. Jaburek) Do you know a man by the name of Hatfield?

A. Yes, sir.

Q. How long did he work in your department prior to March 23rd, 1935?

A. About the same as Royer; about one year.

Q. Did he make any complaint to you at any time?

A. No, sir.

Q. Or did anyone make any complaint to you regarding him?

A. No, sir.

Q. As foreman of that particular department, it was the practice for complaints to be made to you, was it not?

A. Yes, sir.

Mr. Jaburek: That is all.

Mr. Nicoson: That is all.

(The witness was excused.)

Mr. Jaburek: Mr. Cusick.

R. O. CUSICK, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Jaburek) What is your name?

A. R. O. Cusick.

Q. You live in Terre Haute, do you?

A. Yes, sir.

571 Q. Where are you employed?

A. At the Columbian Enameling and Stamping Company.

Q. How long have you been employed there?

A. About 13 years, or 14.

Q. You were there when the strike was called?

A. Yes, sir.

Q. And you quit at that time?

A. Yes, sir.

Q. And came back again in July, 1935?

Mr. Nicoson: To which we object.

A. Yes, sir.

Mr. Nicoson: (Continuing) For the reason that all of these questions are leading. He is leading the witness, and telling the witness what to say by the question that he puts to him, and I object for that reason.

Trial Examiner Lyons: That is a common tendency, a tendency that is common, I think, to all members of the Bar. You may lead to some extent, but keep it within bounds, please.

Mr. Jaburek: I will try.

Q. (By Mr. Jaburek) Do you know Wyrick?

A. Yes, sir.

Q. What is his first name?

A. Arthur.

Q. Did you have occasion to call upon him on or about
572 July the 15th, 1935?

A. I called on him.

Q. Who accompanied you?

A. Hawkins.

Q. Where did you call upon him?

A. To get him to go back to work.

Q. I say, where did you call upon him?

A. At his home.

Q. What did you say to him, and what did he say to you
on that occasion?

A. Well, I asked him to go back to work, and he said that
he was afraid.

Q. Did you promise him a better job?

A. No, sir.

Q. Did you make any remark to the effect that there would
be no union labor in the plant?

A. No, sir.

Q. Did you say that that was his last chance to come back
to work?

A. No, sir.

Q. Did you hear Cusick—

A. My name is Cusick.

Q. (Continuing) —make any one of those three remarks?

A. My name is Cusick.

Q. I mean, Hawkins.

573 A. No, sir.

Q. Do you understand my question?

A. Yes.

Q. Did you hear Hawkins make any one of those three
remarks?

A. No, sir.

Q. What position do you occupy in the plant?

A. Inspector.

Mr. Jaburek: That is all.

Cross-Examination.

Q. (By Mr. Nicoson) Who talked to you about testifying
here today?

A. This man over here—I don't know his name. (Indi-
cating Mr. Jaburek.)

Q. When did he talk to you?

A. Last night.

Q. What did he tell you to say?

Mr. Jaburek: Oh, now, I object.

A. He never told me to say anything.

Trial Examiner Lyons: No.

Mr. Jaburek: I do not think counsel has any right to assume that I would tell him to say anything.

Trial Examiner Lyons: Yes, I was about to make the same remark. That assumes that counsel did tell him to say something. You may ask him, if you wish, what counsel said to him, if anything.

574 I do not think that any offense was meant.

Q. (By Mr. Nicoson): What did this gentleman say to you last night?

A. He just asked me questions.

Q. What questions?

A. Well, he asked me when I went to see this fellow.

Q. Yes. What else did he ask you?

A. He asked me what I said.

Q. What else did he ask you?

A. That's about all.

Q. Then he was the only fellow that you called on, to get to go back to work, is that right?

A. About the only one I know.

Q. I will ask you if it is not a fact that you called on several people?

A. Yes.

Q. You did?

A. Yes, sir.

Q. How many different people did you go around to see?

A. I couldn't tell you.

Q. Was it a hundred?

A. I don't know.

Q. Two hundred?

A. I don't know.

Q. Did you go around and see anybody during the 575 latter part of July about coming back to work?

A. Yes, sir.

Q. Around about the 26th of July, did you make any calls?

A. Sometime around there.

Q. And at that time, you were in the employ of the company, were you?

A. I don't know,

Q. Well, you went back to work on January the 23rd—or, rather on July the 23rd, I believe you said.

A. The 23rd or 24th, or something like that.

Q. Of July, when the plant opened?

A. Yes, sir.

Q. So that you were in the employ of the company at the time you made this call on Wyrick in the latter part of the month of July, were you not?

A. Yes, sir; I must have been.

Mr. Nicoson: That is all.

Mr. Jaburek: If the Examiner please, I had some other notes, concerning two men, and I struck out one of them. Could I ask the witness some further questions about another man?

Trial Examiner Lyons: You want to ask him about somebody else?

Mr. Jaburek: Yes.

Trial Examiner Lyons: Go ahead.

Redirect Examination.

576 Q. (By Mr. Jaburek): Do you know Napier?

A. What is the name?

Q. Napier.

A. No, sir.

Q. Did you call on Wyrick more than once?

A. Yes, sir.

Q. When was the second time that you called upon him?

A. The latter part of July.

Q. Were you accompanied by anyone?

A. Hawkins.

Q. Where did you call upon Wyrick?

A. At his home.

Q. What did you say to him, and what did he say to you on that occasion?

A. I merely asked him to go back to work, and he said that he was afraid.

Q. What did Hawkins say, if anything?

A. Nothing much that I recall.

Q. Did you on this occasion make any threat, or promise to him?

Mr. Nicoson: To which we object for the reason that it calls for a conclusion.

Trial Examiner Lyons: That is a little too broad, is it not?

Mr. Nicoson: It is altogether too broad and indefinite.

Trial Examiner Lyons: You may ask him, did he say this, or did he say that; but to simply ask him, did he make any threat, or promise, although those words are pretty well understood, is a little too broad.

Q. (By Mr. Jaburek): What else, if anything did you say to him besides asking him to come back to work?

A. Nothing that I recall.

Q. Do you know Hartzler?

A. No, sir.

Mr. Jaburek: That is all.

Mr. Nicoson: That is all.

Trial Examiner Lyons: Is that all?

Mr. Nicoson: Nothing further.

(The witness was excused.)

Mr. Jaburek: Mr. Moore.

F. J. MOORE, was called as a witness for the respondent, being duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Jaburek): What is your name?

A. F. J. Moore.

Q. Do you live in Terre Haute?

A. Yes, sir.

Q. Where are you employed?

A. At the Columbian Enameling and Stamping Company.

578 Q. How long have you been employed there?

A. Since February the 6th, 1917.

Q. You have been there since that date, have you, except for the period of the strike?

A. How is that?

Q. I say, you were out during the period when the plant was closed?

A. Yes, sir.

Q. When they called the strike there?

A. Yes, sir.

Q. Do you know Paul Steurwald?

A. Yes, sir.

Q. Did you call upon him at any time subsequent to March of 1935?

A. Yes.

Q. When did you call upon him?

A. After the plant was in operation.

Q. About how long had the plant been in operation?

A. About two or three days, I think, although I am not sure.

Q. Where did you call upon him?

A. At his house.

Q. Who was with you, if anyone?

A. Mr. Kasper.

Q. What did you say to Steurwald on that occasion, and what did he say to you?

579 A. I asked him to come back to work.

Q. What did he say, if anything?

A. He said he didn't care to come back under protection.

Q. Did you say anything further?

A. No, sir.

Q. Did he say anything further?

A. That is all he told me, that he didn't care to come back under protection, and—well, he said a lot of other stuff, too, but I didn't pay very much attention to it.

Q. And—

A. That is all I was interested in.

Q. Kasper was right there, was he?

A. Yes, sir.

Q. What did he say, if anything?

A. Well, I don't think he said anything very much. He was with me, and that's all. I done all of the talking—or about all of the talking.

Mr. Jaburek: That is all.

Cross-Examination.

Q. (By Mr. Nicoson): Do you occupy any kind of official position with the company, Mr. Moore?

A. Repeat that, please.

Q. Are you an officer of the company?

A. I am a superintendent.

Q. And at the time you called on Mr. Steurwald, were 580 you at that time in the employ of the company?

A. Yes, sir.

Q. Receiving pay by the company?

Mr. Nicoson: I think that is all.

Q. (By Trial Examiner Lyons): What position did you hold then, Mr. Moore?

A. Superintendent.

Q. The same position?

A. Yes, sir.

Q. The same as now?

A. The same as at the present time.

Trial Examiner Lyons: That is all.

(The witness was excused.)

Mr. Jaburek: Mr. Kasper.

GILBERT KASPER called as a witness for the respondent, being duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Jaburek): What is your name?

A. Gilbert Kasper.

Q. Where do you live?

A. 2610 north 12th Street.

Q. Terre Haute, Indiana?

A. Yes, sir.

Q. Your occupation, or business?

A. I am a foreman at the Columbian Enameling and 581 Stamping Company?

Q. How long have you been employed there?

A. About 22 years.

Q. You heard Mr. Moore testify just now, did you?

A. Yes, sir.

Q. You are the Kasper who called with him upon Paul Steurwald, are you?

A. Yes, sir.

Q. What did you say, if anything to Steurwald on that occasion?

A. I had nothing to say to Mr. Steurwald.

Q. What did you hear Mr. Moore say to him?

A. He asked him to return to work.

Q. And what did you hear Steurwald say?

A. He said he didn't want to go back to work under protection.

Mr. Nicoson: I cannot hear the witness.

Trial Examiner Lyons: Speak a little louder, Mr. Witness, because every one has to hear you, you know.

Q. (By Mr. Jaburek): Was that all of the conversation?

A. That was all.

Mr. Jaburek: That is all.

Trial Examiner Lyons: Did you hear the last answer of the witness, Mr. Nicoson?

Mr. Nicoson: No.

582 Trial Examiner Lyons: Do you want the last answer repeated?

Mr. Nicoson: Oh, no, that is all right.

Cross-Examination.

Q. (By Mr. Nicoson): At the time you called on Mr. Steurwald, were you in the employ of the company?

A. Yes, sir.

Q. And filling the position of a foreman at that time?

A. Yes, sir.

Mr. Nicoson: That is all.

Mr. Jaburek: That is all.

(The witness was excused.)

Mr. Jaburek: Mr. Day.

Trial Examiner Lyons: Were you sworn with the other witnesses, Mr. Day?

Mr. Day: Yes, sir.

MELVIN DAY, called as a witness for the respondent, being duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Jaburek): What is your name?

A. Melvin Day.

Q. You live in Terre Haute, do you?

A. Yes, sir.

Q. What is your occupation or business?

583 A. Pattern maker for the Columbian Enameling and Stamping Company.

Q. How long have you been employed by the Columbian Enameling & Stamping Company?

584 A. 11 years the 2nd of last April.

Q. Do you know Davis, also employed by the company?

A. What Davis do you refer to, please? I know a Charles Davis who works in the department where I work.

Q. Is he in the courtroom here now?

A. Yes.

Q. Which gentleman is he?

A. The gentleman right there, who was sitting right next to me. (Indicating.)

Mr. Jaburek: What is your first name, Mr. Davis?

Mr. Davis: Charles.

Q. (By Mr. Jaburek): That is the gentleman to whom I refer.

A. Yes, sir.

Q. Do you know Mr. Burke?

A. Yes, sir.

Q. What is his first name?

A. John.

Q. He is the gentleman sitting next to Mr. Davis over here, is he?

A. Yes, sir.

Q. Do you know Max Hart, or Clarence Hart?

A. Clarence Hart?

Q. Yes.

A. Yes, sir.

Q. Did you call upon him some time in the months of April or May of 1935?

A. Yes, sir.

Q. Then Mr. Davis and Mr. Burke accompanied you at that time, did they?

A. Yes, sir.

Q. Where did you call upon Mr. Day?

A. Mr. who?

Q. I should say Mr. Hart.

A. Hart?

Q. Yes.

A. It was at his home.

Q. Now, what did you say, or what did either of the other gentlemen say, if anything, and what did you hear Hart say?

A. Well, we asked him to come back to work, and he said that he was willing to come back to work, and anxious to come back to work, but he didn't want to come back until there was some kind of a settlement made.

Q. Now, what else was said, if anything, by any one of you three gentlemen at that time, yourself, Davis or Burke?

A. Well, I don't remember anything further. They might

have had some conversation, but just what else was said, I couldn't say.

That was the question that we asked him, and that was about all.

Q. Are you a foreman?

586 A. Well, I am the foreman of that department, but I am the only one in the department, and so I am not classed as a foreman.

Q. You are a pattern maker?

A. Yes, sir. I do have help, however, when I need it.

Mr. Jaburek: That is all.

Mr. Nicoson: No questions.

Mr. Jaburek: Just a moment.

Q. (By Mr. Jaburek): Do you know Hough?

A. I know a Huff.

Trial Examiner Lyons: Hough?

Mr. Jaburek: H-o-u-g-h.

Mr. Nicoson: I think he pronounces it "Howe."

Trial Examiner Lyons: Did you not call him "Huff"?

Mr. Jaburek: That was my error.

Trial Examiner Lyons: It is spelled that way, but I think he said his name is pronounced "Howe."

Q. (By Mr. Jaburek): Do you know a James Hough?

A. I know a James Hough, yes, sir—"Howe" or "Huff" or however you pronounce it.

Q. You were not employed in April or May, 1935, were you?

A. No, sir.

Q. That was the period of shut-down of the plant?

A. Yes, sir.

Q. Now, going once more to James Hough, do you 587 recall talking with him sometime during the month of July, 1935?

A. I was talking with him—I don't know whether it was in July or the first of August.

It was right along there after the shop resumed operations, but I don't just remember the date.

Q. Well, where did you talk with him?

A. I talked with him in the plant.

Q. He was working on that day?

A. Yes, sir.

Q. Now, what did you say to him, and what did he say to you at that time?

A. Well, I told him I was glad to see him back, and in hopes he would continue with us.

He said that he was glad to get back, but that there was some—there was reasons why he hated to come back, as well. He said—

Q. What else did he say?

A. He said that it was on account of his buddy; he was afraid that their relations would be broken, and then his buddy's mother also was opposed to him coming back, and tried to stop him from coming that morning; and then his wife was scared to death, afraid that something would happen to him.

Q. Those are the reasons that he told you, are they?

A. Yes, sir.

Q. At that time?

588 A. Yes, sir.

Q. And you did not see him at the plant after that date, did you?

A. No, sir.

Mr. Jaburek: That is all.

Mr. Nicoson: No questions.

Trial Examiner Lyons: That is all.
(The witness was excused.)

Mr. Jaburek: Mr. Davis.

CHARLES DAVIS, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Jaburek) What is your name?

A. Charles Davis.

Q. You live in Terre Haute, Indiana?

A. Yes, sir.

Q. Where are you employed?

A. At the Columbian Enameling & Stamping Company.

Q. How long have you been employed there?

A. 30 years.

Q. You were out during the period of the strike there, were you?

A. Yes, sir.

Mr. Nicoson: I object to that for the reason that it calls

for the conclusion of the witness, and also the further
589 conclusion that the strike is over, yet.

Trial Examiner Lyons: The question is in itself leading, and I will exclude it for that reason.

Mr. Jaburek: All right.

Trial Examiner Lyons: You may ask him when he stopped working for the company, and when he went back. That is the best way.

Q. (By Mr. Jaburek) Did you stop working there on March the 23rd, 1935?

A. The 22nd of March was the last day that I worked.

Q. And when did you return, if you ever have returned?

A. What is that?

Q. When did you return, if you have returned?

A. The 25th of July.

Q. 1935?

A. Yes, sir.

Q. And you have been there since, have you?

A. Yes, sir.

Q. You heard Mr. Day testify just ahead of you, did you?

A. Yes, sir.

Q. How are you employed in the plant?

A. Carpenter.

Q. Are you a foreman?

A. No, sir.

Q. Do you occupy any directory position?

590 A. I am timekeeper.

Q. Now, calling your attention to April or May of 1935, did you have occasion to call with Mr. Day and Mr. Burke on Mr. Hart?

A. Yes, sir.

Q. What did you say to him, and what did he say to you, if anything, at that time and place?

A. Well, all that I said to him was, I asked him if he would be willing to come back to work under the same terms and conditions as he was working under before the strike?

Q. What did he say?

A. He said he would like to come back to work, but he didn't want to come until some kind of a settlement was made.

Q. Is that all that he said?

A. Yes, sir.

Q. Then did you hear Mr. Day say anything additional?

A. Well, I don't remember what he said, but that is all I said to Mr. Hart. I was there with Day and Burke.

Q. Did you hear Mr. Burke say anything?

A. Nothing more than what I have said.

Mr. Jaburek: All right. That is all.

Mr. Nicoson: Is that all?

Mr. Jaburek: That is all.

Cross Examination.

591 Q. (By Mr. Nicoson) You went to see Mr. Hart?

A. Yes, sir, I went to see him.

Q. Who sent you?

A. I haven't seen him since.

Q. I say, who sent you.

A. We went on our own accord.

Mr. Nicoson: That is all.

Mr. Jaburek: That is all.

Trial Examiner Lyons: Step down.

(The witness was excused.)

Mr. Jaburek: Mr. Burke.

JOHN BURKE, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Jaburek) What is your name?

A. John Burke.

Q. You live in Terre Haute, Indiana.

A. Yes, sir.

Q. What is your occupation or business?

A. Carpenter.

Q. Where are you employed?

A. At the Columbian Enameling & Stamping Company.

Q. How long have you been employed there?

A. About 27 years.

Q. Did you quit when the plant was shut down on March 23rd, 1935?

592 A. Yes, sir.

Q. When did you return?

A. When they started up again. I don't know just when it was, just what date it was: about the 24th, I think it was, though, but I am not sure.

Q. Of July, 1935?

A. Yes.

Q. Do you know Day and Davis, who testified here just a moment or two ago?

A. Yes, sir.

Q. You heard them testify?

A. Yes, sir.

Q. Did you call with them on Hart sometime in the month of April or May, 1935?

A. It was later than that.

Q. Well, when was it?

A. Well, it was in July, I think it was; the first of July, if I am not mistaken.

Q. Well, where did you call upon him?

A. At his home.

Q. What was said by the four of you; what did you say to him and what did he say to you?

A. What was said?

Q. Yes. What did you talk about?

A. I didn't say very much. The other two men done 593 the talking. But Mr. Hart said that he didn't quit of his own accord, that he would like to have worked, but the plant shut down, and he was out of work, and that he would like to come back to work just as soon as they got things settled.

That is the way I understood him to say.

Q. What did Day say to him?

A. Day asked him if he would like to come back to work.

Q. And what did Davis say to him?

A. He asked him about the same thing.

Q. And is that about what the conversation was?

A. How is that?

Q. Is that about what the conversation was?

A. Yes, something like that.

Mr. Jaburek: That is all.

Cross-Examination.

Q. (By Mr. Nicoson) Mr. Burke, are you a stockholder in the company?

A. What?

Q. Are you a stockholder in the company?

A. Well, no.

Q. Have you been a stockholder in the company?

A. No, not exactly.

Testimony of William Fried.

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Q. You never owned any stock of the company?

A. No.

Mr. Nicoson: That is all.

594 Mr. Jaburek: That is all.

Trial Examiner Lyons: You may step down.
(The witness was excused.)

Mr. Jaburek: Mr. Fried.

WILLIAM FRIED, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Jaburek) What is your name?

A. Bill Fried.

Q. You live in Terre Haute, Indiana.

A. Yes, sir.

Q. What is your occupation or business?

A. I work for the Columbian.

Q. For the Columbian Enameling & Stamping Company?

A. Yes, sir.

Q. What kind of work do you do there?

A. Bailing.

Q. Are you a foreman?

A. No, sir.

Q. Have you been a foreman at any time?

A. No, sir.

Q. Did you leave when the plant shut down last March?

A. Yes, sir.

Q. When did you come back?

A. On the 24th day of July.

595 Q. Do you know Clarence Hart?

A. Yes, sir.

Q. Did you talk with him at any time after the plant had shut down?

A. Yes, sir.

Q. About when?

A. Sometime in July.

Q. 1935?

A. Yes, sir.

Q. What did you say to him, and what did he say to you at that time?

A. Well, I told him that a job was open, and that I thought

he would get it if he would come back for it; and he said that he was satisfied with the working conditions, but he wouldn't come back under—until there was a settlement.

Q. Where did you talk with him?

A. At his home.

Q. Did you say anything to him at that time about a black-list?

A. No.

Q. Did you say anything to him about getting a vote if he came back?

A. No.

Q. Was the matter of a vote mentioned by you?

A. No.

596 Mr. Jaburek: That is all.

Mr. Nicoson: Just a moment.

The Witness: Yes, sir.

Cross-Examination.

Q. (By Mr. Nicoson) What time of the day was this, that you called on him?

A. I didn't hear you.

Q. I say, what time of the day was it that you called on him?

A. Well, I think it was in the afternoon, but I wouldn't say for sure; I don't remember.

Q. What time in the afternoon?

A. Well, around three o'clock.

Q. You are a little hard of hearing, are you not?

A. Yes, sir.

Q. Are you sure that you heard everything that was said, or going on there that day?

A. Yes, sir. There was no one there, only him and I.

Q. I thought you testified that Burke and Davis were there with you, also?

A. He was satisfied with working conditions.

Q. I say, I thought you testified that Mr. Burke and Mr. Davis were with you, when you called on him.

A. No, I wasn't with them.

Q. You were not with them?

A. No, sir.

597 Mr. Jaburek: I think you have gotten this man mixed up with somebody else, counsel.

Mr. Nicoson: Possibly so.

Q. (By Mr. Nicoson) You did call on Mr. Hart though, did you not?

A. Yes, sir.

Q. And you are positive that you heard everything that was said?

A. Yes.

Q. But you admit that you are a little hard of hearing?

A. Yes, sir.

Mr. Nicoson: That is all.

Mr. Jaburek: That is all.

(The witness was excused.)

Mr. Jaburek: Mr. Irwin.

CASH IRWIN, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Jaburek) What is your name?

A. Cash Irwin.

Q. You live here in Terre Haute.

A. Yes, sir.

Q. What is your occupation or business?

A. Foreman, working for the Columbian Enameling & Stamping Company.

598 Q. How long have you been employed there?

A. About 16 years.

Q. You were out when the strike was called last March, were you?

A. Yes, sir.

Q. And you came back again when the plant reopened in July, did you?

A. Yes, sir.

Q. Do you know James Hough?

A. Yes, sir.

Q. Did you have occasion to talk to him in June, 1935?

A. Yes, sir.

Q. Where did you talk with him?

A. At his home.

Q. What did you say to him and what did he say to you on that occasion, at that time and place?

A. Well, I asked him if he was about ready to come back to work, and he told me that he was perfectly willing to come

back, ready to come at any time; and he also told me that any time that he could come back to work, why, to let him know; that he was ready to come back to work.

Q. Then did you talk to him again in the latter part of July, 1935?

A. Yes, sir.

Q. After the plant reopened?

599 A. Yes, sir.

Q. About what date was it?

A. Well, I really don't know; I would not want to try to say, because I am not sure about it.

Q. Approximately?

A. Well, I would judge that it was about two or three or maybe four days after the plant reopened.

Q. And where did you see him on this occasion?

A. At his home.

Q. What did he say, if anything, on this occasion, and what did you say?

A. Well, I told him we were ready to go back to work, and his wife seemed to show a little opposition to it, she didn't want him to go, I think; and he didn't tell me whether he would go or not at the time.

I left the house, and he followed me outside and told me that he would be at my house the next morning, to come to work.

Q. And was he at your house?

A. Yes, sir.

Q. The next morning?

A. Yes, sir.

Q. And he and you went to work together?

A. Yes, sir, he and I went to work together.

Q. State whether or not he worked that day?

600 A. He worked that day, a full day.

Q. Did you say to Hough on either of those two occasions that Mr. Gorby said that he would not meet with the Scale Committee?

A. No, sir.

Q. Did you say to him that anyone else representing the company said that he would not meet with the Scale Committee?

A. No, sir.

Q. Did you say to him on either of those two occasions that he would have to let you know then whether he was coming back or not?

- A. No, sir.
Q. Did you see Hough after that, after the day that he returned to work?
A. No, sir.
Q. How many days did he work, if you know?
A. He worked one day.
Q. And how many days thereafter did you see him?
A. About two or three days.
Q. Where did you see him?
A. At my home.
Q. He call'd upon you?
A. He call'd on me, yes, sir.
Q. What did he say to you, and what did you say to him on that occasion?

601 A. Well, he told me that he had changed his mind, and he wanted to come back to work again, and wanted to know if there was anything that I could do to help him, to help him get back to work.

Q. Did you notice anything about Mr. Hough on this occasion?

A. Well, yes sir. He sat there with tears in his eyes, and seemed to be wanting to work awfully bad.

Mr. Jaburek: That is all.

Cross-Examination.

- Q. (By Mr. Nicoson) You say you are a foreman?
A. Yes, sir.
Q. And have been foreman for how many years?
A. About 16 years.
Q. You went back to work for the company about the 23rd day of July, did you?
A. Yes, sir.
Q. And I believe you testified that you called on Mr. Hough around about the 26th day of July; is that right?
A. Somewhere along in there, yes, sir.
Q. What time did you call on him?
A. Well, I really wouldn't know.
Q. Was it in the morning or in the afternoon?
A. It was in the evening, I would say. I am not so sure that it was on the 26th of July.
Q. Yes?
602 A. But it was around them, at that time.
Q. Are you sure about that?

A. Yes, sir.

Q. You are not positive though, are you?

A. Well, yes, as well as I can remember.

Q. And at the time you called upon him you were in the employ of the company, were you not?

A. Yes, sir.

Q. And you were drawing a salary?

A. Yes, sir.

Mr. Nicoson: That is all.

Mr. Jaburek: That is all.

(The witness was excused.)

Mr. Jaburek: Mr. Carter.

JOE CARTER, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Jaburek) What is your name?

A. Joe Carter.

Q. Where do you live?

A. Terre Haute, Indiana.

Q. What is your business or occupation?

A. Superintendent, power and light.

Q. Where are you employed?

A. At the Columbian Enameling & Stamping Company.

603 Q. And how long have you been employed with that company?

A. Since November 23rd, 1900.

Q. Have you been there continuously?

A. No, sir. I was away for a period of five years.

Q. When did you return to that company after that period of five years?

A. July 1, 1935.

Q. And have you been there since?

A. Yes, sir.

Q. Do you know Shaw?

A. Yes, sir.

Q. A colored man?

A. Yes, sir.

Q. Did you talk with him in June of 1935?

A. Yes, sir, in the latter part of June.

Q. What did you say to him and what did he say to you, at that time?

A. I requested that he return to work.

Q. Where did you talk with him?

A. At his home.

Q. All right. Now, state the conversation, what you said to him and what he said to you?

A. Well, he said he would like to come back to work, but he was very much afraid, that he had been threatened that if he returned, he would be killed.

604 That was the sense of his conversation.

Mr. Nicoson: I move to strike out the answer. I would like to know what the conversation was. If he is just manufacturing it here, I do not want to hear it.

Trial Examiner Lyons: I thought that he was repeating the conversation.

The Witness: I beg your pardon, sir. This is not manufactured. The conversation that I had.

Trial Examiner Lyons: It is not necessary for the witness to volunteer.

Mr. Nicoson: I move that that be stricken from the record.

Trial Examiner Lyons: Yes, it may be stricken. May the answer be read. I was not aware that there was anything improper in it. Perhaps I was not paying close attention. Read the answer please, Mr. Reporter.

(The answer referred to was read by the reporter as above recorded.)

Trial Examiner Lyons: Do you object to it on the ground that he said it was the sense of it, Mr. Nicoson?

Mr. Nicoson: Pardon me.

Trial Examiner Lyons: I say, do you object to it upon the ground that he said "that was the sense of it"?

Mr. Nicoson: I will withdraw the objection.

Trial Examiner Lyons: That takes care of it.

605 Q. (By Mr. Jaburek) Did you say to Shaw that it meant his job if he did not come back?

A. No.

Q. Do you know one Hart?

A. Clarence Hart?

Q. I think it is Clarence Hart.

A. Yes, sir.

Q. Did you call upon him in the latter part of June, 1935?

A. I did.

Q. About when?

A. About the 30th, I would say.

Q. Where did you call upon him?

A. At his home.

Q. What did you say to him, and what did he say to you, at that time and place?

A. I requested that he return to work, that a job was there for him if he wanted it.

Q. And what did he say?

A. He said he was rather afraid to return, and didn't care about returning until a settlement was made.

Q. Is that the sum and substance of the conversation?

A. That was about all, yes, sir.

Mr. Jaburek: That is all.

Cross-Examination.

Q. (By Mr. Nicoson) When did you become super-
606 intendent of power and light?

A. July 19th, 1935.

Q. And previous to that time—or previous to March 23rd, what were you doing?

A. I was in the—on March the 23rd I was not employed by the company at all.

Q. You were not employed at that time?

A. And I had not been for five years.

Q. You had been away for a period of about five years?

A. I had been away for a period of about five years, yes, sir.

Mr. Nicoson: That is all.

A. (Continuing) Specifically from August 30th, 1930—or August 6th, 1930.

Trial Examiner Lyons: Had counsel finished?

Mr. Nicoson: That is all.

Trial Examiner Lyons: I want to ask you a question, Mr. Carter.

The Witness: Yes, sir.

Q. (By Trial Examiner Lyons) When you spoke to him, and asked him to return, you said a job was there for him if he wanted it.

A. Yes.

Q. How did you know there was a job there for him?

A. This was June 30th?

607 Q. Yes.

A. I was employed by the company before July 19th.

Q. I know you were, but you said there was a job there for him.

A. Yes.

Q. Were you permitted to hire men?

A. Well—

Q. By yourself?

A. I was trying to see the old force, the old employes of the power department who had worked under me formerly. I was desirous of retaining them, because I felt that it was to the interests of everyone of them, and to the interests of the company, if I could get their services, and I tried to see each personally.

Q. And did you assure each of them whom you saw, that they could have their jobs if they wanted them?

A. Yes, sir; they could have come back to work.

Q. Upon what authority did you tell them that they could have their jobs?

A. On my authority. I was then put in charge of that department, and I believed that it was the company's wish to take on all of the old employes that they could possibly get, and working on that assumption, I followed that course.

Q. Did somebody tell you to go to them—

A. No.

608 Q. —and inform them to that effect?

A. No, sir, I did it on my own initiative.

Q. You just assumed the authority to approach them, I take it, is that right?

A. That was all. They were welcome back; I know that. Trial Examiner Lyons: That is all.

Mr. Nicoson: If I may ask just one or two more questions.

Trial Examiner Lyons: Proceed.

Q. (By Mr. Nicoson) How did you know that?

A. Because I had been placed in charge of that department, and I felt that I wanted the old men back—

Q. Had you been placed—

A. —who were familiar with the operations.

609 Q. Had you been placed in charge of that operation in June, Mr. Carter?

A. In June.

Q. Then the statement which you made, that you were employed on July 23, 1935 is not true, is that right?

A. July 23rd?

Q. Yes.

A. No. We started in the plant—I mean to say that we were in the plant on July 19th, but I had been employed prior to that time.

Q. When did your service start with the company?

A. Oh, in June some time. I have forgotten the exact date.

Q. About the 1st of June?

A. Well, I wouldn't say; I couldn't say definitely, because I don't remember.

Q. About the last of June?

A. It was not the last of June, no, sir.

Q. But you know that it was in June?

A. It was in June.

Q. Previous to that time you had not been in the employ or the service of the company for five years?

A. About five years.

Q. Who employed you in June?

A. The general manager of the company.

Q. What is his name?

610 A. Mr. W. H. Grabbe.

Q. And what did he say to you at the time you were employed, do you remember?

A. That I had been—that if I cared to, I would be reinstated in my former position, which had been left open for me from the time I left the plant.

Q. And he did not tell you to see if you could get some people to go to work, did he?

A. No, he didn't tell me to.

Q. You simply went out on your own hook?

A. Yes, sir, on my own initiative.

Q. In consideration of your getting your job, you went out and tried to fill up your department?

A. No, no. I had my job, and I wanted the other fellows to have a job.

Q. How did you know you had your job?

A. Because I had already been engaged.

Q. Had you received any money?

A. No, sir.

Q. You had not?

A. Not at that time, but later I did.

I did not ask for my pay in advance.

Q. And the money which you received was compensation for your time in June, the time you said you were reemployed?

A. The money I received was legal pay for services rendered by me.

611 Q. And at the time you were employed, were you employed as superintendent of the power and light department?

A. I was, sir.

Mr. Nicoson: That is all.

Mr. Jaburek: Nothing further.

Trial Examiner Lyons: You may step down.
(Witness excused.)

Mr. Jaburek: If the Examiner please, I am afraid that I will have to ask for a suspension at this time.

Trial Examiner Lyons: Have you any further witnesses to introduce?

Mr. Jaburek: I have a few more, yes, Mr. Examiner, but I have got to do a little mopping up, because I do not know just where I stand.

Trial Examiner Lyons: Well, if counsel—

Mr. Jaburek: So if we can do so, if it is satisfactory to the Examiner and counsel to come back right after supper, I think that I can finish up within a very short time.

Trial Examiner Lyons: Is that agreeable to counsel?

Mr. Jaburek: I might also say, Mr. Examiner, that I would like to make a brief argument, following the completion of the testimony.

Mr. Nicoson: Oh, well, if counsel is going to make an argument, Mr. Examiner, I suggest that we suspend at this time.

612 Trial Examiner Lyons: We will give counsel as much time as he feels necessary to make his argument. Counsel on either side may have all of the time that they want--within reasonable limitations, of course.

But the point is, is there any advantage in trying to finish up tonight, or would you prefer to adjourn at this time until tomorrow morning, and finish up then?

Mr. Smith: Mr. Examiner, I think that there will be a very distinct advantage in finishing up tonight, if that can be done.

Trial Examiner Lyons: You do.

Mr. Smith: Yes.

Trial Examiner Lyons: Very well.

Mr. Jaburek: I am sure we can finish tonight, Mr. Examiner.

Trial Examiner Lyons: Would counsel like to suspend now, and come back in a reasonable time, or would you prefer to proceed for a while at this time?

Mr. Jaburek: I would rather suspend now, and come back later. I will not take a half an hour.

Trial Examiner Lyons: Some of us would like to get away tonight, rather than stay over until tomorrow.

Mr. Smith: I want to leave tonight.

Trial Examiner Lyons: How much time do you gentlemen desire, for the recess?

613 Mr. Jaburek: Any reasonable time.

Trial Examiner Lyons: Suppose we come back then at seven o'clock, and run from seven until nine, and see if we can finish in that time.

(Thereupon, at 5 o'clock p. m., a recess was taken until 7 o'clock p. m.)

After Recess.

(The hearing was resumed at 7 o'clock p. m. pursuant to the taking of recess.)

Trial Examiner Lyons: The hearing will come to order. Counsel may proceed.

Mr. Jaburek: Mr. Harman, will you take the witness stand. This witness has not been sworn, Mr. Examiner.

Trial Examiner Lyons: Be sworn, please.

W. F. HARMON, called as a witness for the respondent, being first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Jaburek) What is your name?

A. W. F. Harmon.

Q. Your residence

A. Terre Haute, Indiana.

Q. Your occupation or business?

A. Traffic manager.

Q. For whom?

A. For the Columbian Enameling and Stamping Company.

614 Q. How long have you been connected with that company?

A. About 31 years.

Q. Last past?

A. Pardon me?

Q. 31 years last past?

A. Yes, sir.

Q. Calling your attention to March 23rd, 1935, how many persons were employed including yourself, in the receiving and shipping departments of the company's plant?

A. Ten.

Q. And calling your attention to November 30th, 1935, how many persons were employed in those two departments, including yourself, as of that date?

A. 8.

Q. Now calling your attention to the Traffic World, published by the Traffic Service Corporation, 418 South Market Street, Chicago, Illinois: do you have access to this periodical as it is published weekly?

A. Yes, sir.

Q. Have you examined it for the period beginning with the week ending March 9th, 1935, and ending with the week ending November 23rd, 1935, with reference to reports therein of revenue freight loadings?

A. Yes, sir.

Q. What is the answer?

615 A. I have.

Q. Did you cause a summary to be made of the revenue freight loadings reported in this periodical week by week as they appeared therein?

A. Yes.

Mr. Jaburek: I will ask the reporter to mark this document as Respondent's exhibit No. 19 for identification.

(The document referred to was marked Respondent's Exhibit No. 19 for identification.)

Q. (By Mr. Jaburek) Showing you respondent's exhibit No. 19 for identification, Mr. Harmon, will you examine it.

A. Yes, sir.

Q. Is this the summary which you prepared from an examination of this periodical, the Traffic World, during the period I have indicated, that is, from the week ending March 9th, 1935 to the week ending November 23rd, 1935?

A. Yes, sir.

Q. And it presents a correct summary of the items referred to as contained in the various issues of this publication, does it?

A. Yes, sir.

Trial Examiner Lyons: For the benefit of the record, will you make it clear just what is meant by "revenue freight loadings", and how they relate to this company, if they do?

616 Q. (By Mr. Jaburek) Do you, Mr. Harmon, know what is meant by the phrase "revenue freight loadings"?

A. Revenue freight is only that freight that the railroads derive money from.

It does not include cinders, for example, or company material.

Mr. Jaburek: We are ready now to introduce these exhibits into evidence, Mr. Nicoson. They are the same ones as you have been shown from time to time.

We offer in evidence at this time, Mr. Examiner, Respondent's Exhibits 1 to 19, both numbers inclusive, which have been heretofore marked for identification.

Trial Examiner Lyons: Are those all that you have, Mr. Jaburek?

Mr. Jaburek: Yes.

Trial Examiner Lyons: Is there any objection?

Mr. Smith: No objection.

Mr. Nicoson: No objection.

Trial Examiner Lyons: The documents will be received in evidence, and marked as Respondent's exhibits of corresponding numbers.

(The documents referred to were received in evidence and marked RESPONDENT'S EXHIBITS NOS. 1 to 19, inclusive.)

Mr. Jaburek: Now, if the Examiner please, we wish 617 to introduce in evidence chapter 2 of Burns' Indiana Statutes, annotated, for the year 1933, sections 40-201, 40-202, 40-203 and 40-204, covering the matter of assignment of wages.

Do you desire to have those sections read into the record, Mr. Examiner, at this time, or can the reporter get this volume from the Chicago Law Library, and insert them?

Mr. Smith: I do not see any reason for reading them into the record.

Trial Examiner Lyons: I suppose it could be agreed that that chapter and those sections could be—

Mr. Jaburek: It is not the whole chapter.

Mr. Nicoson: It is just certain sections.

Mr. Jaburek: Yes.

Trial Examiner Lyons: I suppose it could be agreed that those sections could be read by the Examiner, or the Board, from any standard copy.

Mr. Smith: They can just take notice of it.

Trial Examiner Lyons: Yes.

Mr. Jaburek: It is so agreed, is it?

Mr. Smith: Yes.

Trial Examiner Lyons: It is stipulated that the Examiner may take notice of those sections.

Mr. Jaburek: From any standard copy of the Indiana Statutes, annotated.

Mr. Nicoson: Yes.

618 Mr. Smith: Yes.

Mr. Jaburek: And that the reporter may copy them into the record from another copy which he may procure—

Mr. Walker: Burns' Indiana Statutes.

Mr. Jaburek: Of Burns' Indiana Statutes.

Trial Examiner Lyons: Is there any need of copying them into the record?

Mr. Jaburek: Pardon me?

Trial Examiner Lyons: I say, is there any need of having them copied into the record? They can be taken notice of.

Mr. Smith: That is what I say.

Trial Examiner Lyons: And the Examiner, or the Board, can find a copy, and read it themselves.

Mr. Smith: There is no need of having them copied into the record.

Mr. Jaburek: Well, that was our impression.

Trial Examiner Lyons: Oh, no. We have libraries where we can get these things.

Mr. Jaburek: Very well.

Mr. Nicoson: For the benefit of the Examiner, and also for the benefit of the record, I might state that there is another recognized revision of the Indiana Statutes, known as Baldwin's Revised Statutes of 1934.

The section numbers in Baldwin's Statutes are not the same as those in Burns' Statutes, which have just been referred 619 to by counsel here, but either one of them contains all of the statutes.

I just thought that I would mention that, in case one volume was not available, so that you might be able to get it from Baldwin's, or Burns' either one, which ever the case may be.

Mr. Hilleary: I might also say, Mr. Examiner, that Burns' Statutes are in a set of twelve volumes, and Baldwin's is just one large volume.

Trial Examiner Lyons: I understand. I will read the corresponding sections which cover the assignment of wages.

Mr. Jaburek: Very well.

Mr. Hilleary: But the section numbers will not be the same.

Mr. Nicoson: The section numbers are not the same in both books.

Trial Examiner Lyons: I understand.

Mr. Jaburek: We are through.

Trial Examiner Lyons: Is there any cross examination?

Mr. Nicoson: Yes.

Q. (By Mr. Nicoson) Where did you say you live?

A. Terre Haute.

Q. Whereabouts in Terre Haute?

A. 1437 Plum Street.

Q. How long have you lived there?

620 A. Oh, about eleven or twelve years.

Q. In your position as traffic manager, you are over the shipping department, is that right?

A. Yes, sir.

Q. And both the inbound and the outbound shipments come through your department?

A. The outbound is handled through the receiving department, but I have charge of it.

Q. Well, now, your outbound—is that what you are receiving, what is coming into the plant?

A. I beg your pardon. No, I said that wrong.

Q. Yes.

A. The inbound is handled by the receiving department.

Q. The inbound is handled by the receiving department?

A. Yes, sir.

Q. You now have eight men involved in that operation?

A. Yes, sir.

Mr. Nicoson: That is all.

Mr. Jaburek: That is all.

(Witness excused.)

Mr. Jaburek: That closes our case, if the Examiner please, except that I would like to make a motion to dismiss, again,—unless counsel has some rebuttal evidence that he wants to put on, first.

Trial Examiner Lyons: There were some questions I 621 had, that I wanted to ask—

Mr. Nicoson: Yes.

Mr. Jaburek: Of this witness?

Trial Examiner Lyons: No, of another witness. Perhaps before you renew your motion, we might get that evidence out of the way.

Mr. Jaburek: Well, all of the evidence so far as we are concerned, is out of the way right now.

Trial Examiner Lyons: Yes, except as I say, what I want to ask of one witness whom I want to recall to the stand.

Mr. Jaburek: Oh, yes.

Trial Examiner Lyons: Is the secretary of the union present, Mr. Cox?

Mr. Cox: Yes, sir.

Trial Examiner Lyons: Will you take the stand, please?

OTIS COX, recalled as a witness for the Petitioner, being previously duly sworn, testified further as follows:

Examination by Trial Examiner Lyons.

Q. (By Trial Examiner Lyons) Give your name again, for the benefit of the reporter, who was not here when you testified before, I believe.

A. Otis Cox.

Q. You are treasurer—or secretary—

A. Secretary.

Q. —of the union?

622 A. Yes.

Q. The Petitioner in this case?

A. Yes, sir.

Q. You showed—or the union showed yesterday, that in March of 1935 you had 485 members.

A. Yes, sir.

Q. And that from that time until the present time there have been no records kept because of the rule of the American Federation of Labor which did not require a list of paid up members under the circumstances which prevailed after March, 1935.

Is that right?

A. Yes, sir.

Q. Can you tell us whether or not there were any resignations or suspensions from the union between March 1935, when the last record which you introduced, was kept, and November, 1935?

A. So far as the records are concerned, there have been no suspensions.

Q. Have there been any resignations?

A. No, not formally.

Q. Then can it be fairly said that in July and August of 1935 the membership was substantially the same in number as it was in March, so far as you have any record to the contrary.

A. According to the records, yes, sir.

Q. I think it was stated that the union still holds meetings?

623 A. Yes, sir.

Trial Examiner Lyons: I think that is all. Are there any questions of the witness by either counsel?

Mr. Jaburek: No questions from our side.

Mr. Nicoson: No.

Trial Examiner Lyons: You may step down.

(Witness excused.)

Trial Examiner Lyons: That seems to conclude the evidence. Now if there is anything further that either counsel has to say, I will be glad to hear it at this time.

Mr. Jaburek: Well, at this time I would like to renew my motion.

Trial Examiner Lyons: You desire to renew the motion which you have already made, to dismiss the complaint?

Mr. Jaburek: Yes, Mr. Examiner, I want to renew the motion already made, both as to the complaint, and as to each count thereof; and I would like to have the Examiner consider that I am now making the same argument that I made at the preceding session, when the motion was made.

Trial Examiner Lyons: Yes, I will consider all that you have already said.

I will deny your motion at this time.

Mr. Jaburek: Now we would like to preserve our rights, whatever rights we may have in the matter of filing a brief,

or making an oral argument, or filing exceptions with 624 you, or with the National Labor Relations Board, if the Board takes over the case.

Trial Examiner Lyons: Well, you may have the right to make an oral argument at this time, if you desire to do so.

Mr. Jaburek: Well, we wish to waive the right to make oral argument at this time.

Trial Examiner Lyons: Very well. Do either of the other counsel desire to make an argument in this case?

Mr. Smith: I do not.

Mr. Nicoson: No.

Trial Examiner Lyons: Very well.

Now on the question of briefs, I might say this, that if this case is not assumed by the National Labor Relations Board, and I am directed to make an intermediate report, you will be duly notified, and will have an opportunity to file briefs with me.

How much time would you like,—assuming now that I am going to take the case for an intermediate report?

How much time would you like to have for the filing of briefs with me?

Mr. Jaburek: Well, Mr. Examiner, because counsel here from Terre Haute are associated with me in the case, for respondent, and I am from Chicago, I think I would like to have at least fifteen days instead of the ordinary ten days.

Trial Examiner Lyons: Very well.

625 Mr. Jaburek: Which I do not think is unreasonable under the circumstances.

Trial Examiner Lyons: Very well. If I am directed to file an intermediate report, I will allow you fifteen days to file a brief, and that same privilege will be extended to the other counsel.

Mr. Jaburek: Thank you.

Trial Examiner Lyons: If the case is assumed by the National Labor Relations Board, you will receive notice of that fact, and will unquestionably be granted a sufficient time to file your briefs.

I will notify the board that you have made a request for fifteen days, and that I have granted it, insofar as I was able to do so.

Mr. Jaburek: And may I ask that my Chicago address be shown upon the record, Mr. Examiner, so that any notice may be sent to me direct, instead of being sent here, and being delayed in transit to Chicago?

Trial Examiner Lyons: Yes. The stenographer may make a note of that, although that is generally shown on the written appearances that are filed for the record.

Mr. Jaburek: Well, there was no written appearance entered here by our side. The appearance was simply entered with the reporter in open court.

Trial Examiner Lyons: The reporter informs me that 626 appearance blanks are available here, and if counsel will fill them out, their names and addresses will be shown upon the title page of the transcript.

Now, is there anything further?

Mr. Neeson: I think that completes the case, Mr. Examiner.

Trial Examiner Lyons: Then the hearing before me is closed, subject to the order of the National Labor Relations Board.

Mr. Jaburek: Before you close the record, Mr. Examiner,

370 Order Transferring Proceedings to N. L. R. B.

may I, on behalf of respondent counsel thank you for your courtesy and consideration during the conduct of this hearing.

Trial Examiner Lyons: Thank you.

(Whereupon at 7:25 o'clock p. m., December 11, 1935, the hearing in the above entitled matter was closed.)

627 BEFORE THE NATIONAL LABOR RELATIONS BOARD.

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 16th day of December, 1935.

Present:

* * * (Caption—XI-C-7) * *

ORDER TRANSFERRING PROCEEDING TO NATIONAL LABOR RELATIONS BOARD.

A hearing having been duly held in this proceeding before a Trial Examiner duly appointed, and the Board deeming it necessary, in order to effectuate the purposes of the National Labor Relations Act, that the proceeding be transferred to and continued before it,

It Is Hereby Ordered, in accordance with Section 35 of Article II of National Labor Relations Board Rules and Regulations—Series 1, that this proceeding be transferred to and continued before the Board.

By direction of the Board:

(Seal)

Benedict Wolf,
Benedict Wolf,
Secretary.

628

THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—XI-C-7) *

MOTION.

Now comes Columbian Enameling & Stamping Co., Inc., respondent, by Otto A. Jaburek and Walker, Hilleary & Cox, its attorneys, and moves that the time within which this respondent may file its brief in this proceeding be extended to and including January 11, 1936, and in support thereof presents the affidavit of Otto A. Jaburek, one of its attorneys.

Columbian Enameling & Stamping Co., Inc.,
by Otto A. Jaburek,
Walker, Hilleary & Cox,
Its Attorneys.

December 24, 1935.

629

THE NATIONAL LABOR RELATIONS BOARD.

* * (Caption—XI-C-7) *

AFFIDAVIT.

State of Illinois } ss.
County of Cook }

Otto A. Jaburek, being duly sworn, upon oath deposes and says as follows:

I am one of the attorneys for the respondent in and to the above entitled cause and am in active charge of said cause and in the preparation of the brief to be filed therein.

Said Board has granted respondent fifteen days in which to file said brief, but included in said fifteen days are two Saturday half-holidays, two Sundays and two holidays, Christmas and New Years, which when deducted from the fifteen days allowed leaves but ten days.

I am also actively engaged in a case in the Superior Court of Cook County, Illinois, involving the constitutionality of the Minimum Wage Law for Women and Minors of the State of Illinois in which it is necessary that I prepare a brief and also prepare for an argument upon a motion for temporary injunction. This latter matter has taken a great deal of my time and will take a great deal more of it within the next ten days. As a result I will not be able to prepare the brief in

the above cause and forward it to Washington on or before January 4, 1936.

I believe that the respondent has a meritorious defense to the complaint filed in this cause and that the additional 630 time requested is necessary in order that its brief may be properly prepared.

Otto A. Jaburek.

Subscribed and sworn to before me this 24th day of December, A. D. 1935.

(Seal) **Viola E. Hagan,**
*Notary Public in and for Cook County,
Illinois.*

631 Endorsed: The National Labor Relations Board
* * (Caption—XI-C-7) * *. Motion and Affidavit. Otto
A. Jaburek, Lawyer, 1152 Pure Oil Building, 35 East Wacker
Drive, Telephone Central 4138, Chicago, and Walker, Hilleary
& Cox, Attorneys for Respondent.

632 UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of
Columbian Enameling & Stamping Co.
and
Enameling & Stamping Mill Employees
Union, No. 19694. } Case No. C-14

DECISION.

Statement of Case.

On October 31, 1935, Enameling & Stamping Mill Employees Union No. 19694, hereinafter referred to as the union, filed with the Regional Director for the Eleventh Region a charge that the Columbian Enameling & Stamping Company had engaged in and was engaging in unfair labor practices forbidden by the National Labor Relations Act. On November 21, 1935 the Board issued a complaint against the Columbian Enameling & Stamping Company, hereinafter referred to as the respondent, said complaint being signed by the Regional Director for the Eleventh Region and alleging that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and

(5) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act. In respect to the unfair labor practices the complainant alleged in substance:

1. All the departments at the Terre Haute Plant of the respondent with the exception of the office and clerical departments constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of said Act.

2. On or before March 22, 1935, and at all times thereafter mentioned herein, a majority of the employees in said unit had designated the union as their representative for the purposes of collective bargaining with the respondent, such designation having been made by becoming members of the union and appointing a committee of union members to bargain with the respondent. At all times since March 22, 1935, said union has been the representative for collective bargaining of a majority of the employees in said unit and has by virtue of Section 9 (a) of said Act, been the exclusive representative of all employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

3. On July 22, September 20, and October 11, 1935, while the respondent was engaged at the Terre Haute Plant as described above, the union requested the respondent, through its officers, agents and employees to bargain collectively in respect to rates of pay, wages, hours of employment, and other conditions of employment, with the union as the representative of the employees who are members of the union and as the exclusive representative of all the employees in said

unit. On said dates and at all times thereafter the respondent did refuse and has refused to bargain collectively with the unions as the representative of the employees who are members of the union or as the exclusive representative of all the employees in said unit, in that it refused to meet, for the purpose of collective bargaining or any other purpose, with the committee of the union designated by the union to engage in collective bargaining.

4. On or about March 22, 1935, the union duly voted to call a strike of the employees in the Terre Haute Plant of the respondent and since that date and at all times thereafter mentioned herein the employees who are members of the union and other employees have been on strike. The union has not since March 22, 1935, or at any time thereafter, voted to cease such strike or to return to employment at the Terre

Haute Plant. On many occasions since July 5, 1935, the respondent through its officers and agents has solicited individual employees who are members of the union to return to employment, has threatened such employees with permanent discharge if they did not so return to employment immediately, and has informed such employees that there would never henceforth be a union in the Terre Haute Plant and has attempted to induce and has induced many of such employees to return to employment at the Terre Haute Plant, while at the same time refusing to bargain collectively with the union as set forth hereinabove.

The complaint and accompanying Notice of Hearing were served on the respondent in accordance with National Labor Relations Board Rules and Regulations—Series 1, Article V.

On December 2, 1935, the respondent filed an answer alleging in substance as follows:

1. That the National Labor Relations Act violates the Fifth Amendment to the Constitution of the United States and is accordingly unconstitutional.
2. That the respondent is not engaged in interstate commerce and that its operations do not constitute a continuous flow of trade of commerce and, as applied to it, the National Labor Relations Act is unconstitutional and void.
3. That the allegations do not constitute charges of unfair labor practices.
4. That in July and August of 1935, the respondent afforded all striking employees an opportunity to return to its employment without discrimination and a large number did so return.
5. That the respondent on July 14, 1934 entered into a contract with the union, one of the provisions of which was for arbitration of disputes and disagreements; that at various times the union made demands contrary to the provisions of the agreement; that such a demand was the demand for a closed shop; that according to the aforesaid agreement, the union demanded arbitration of these disputes though they did not in fact or law arise thereunder; that the union spread misinformation as to respondent's position in respect to arbitration and to the effect that respondent was violating the agreement; that the union instituted a strike against the respondent because it would not accede to the closed shop; that the union engaged in acts of violence against respondent's property; that on July 19, 1935 respondent began preparations for re-opening its plant and that the union thereupon

interfered with employees engaged in so re-opening the 634 plant; that sometime after July 23, 1935, the respondent filled all available positions in its plant; that thereupon the strike against respondent ceased to exist.

6. That the aforesaid strike was an unlawful strike for an unlawful purpose and in violation of the aforesaid agreement; that those employees who joined in said strike ceased to be employees of respondent; that none of those who re-entered respondent's employment have made any request upon respondent that it bargain collectively.

7. That those persons who sought on September 20, 1935 and October 11, 1935 to bargain collectively as employees with respondent were not employees of respondent and sought to end a controversy which had ceased to exist.

Commencing on December 9, 1935 a hearing was held at Terre Haute, Indiana, by Daniel M. Lyons sitting as Trial Examiner, and testimony was taken. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to both parties. The respondent moved to dismiss the complaint on the ground that the Act is unconstitutional in that "it is violative of the Commerce Clause of the Constitution; second, that it is violative of the Fifth Amendment to the Constitution; and thirdly, that it failed to state a cause of action." (3) The motion was denied by the Trial Examiner and an exception was thereupon taken. (4) The motion was renewed at the conclusion of the hearing and again denied (598). Objection was taken to the introduction into evidence of the union's charge and overruled (5).

On December 16, 1935 the Board acting pursuant to Section 35, Article II of said Rules and Regulations, Series V, directed that the proceeding be transferred to and continued before it.

Findings of Fact.

Upon the record in the case, the stenographic transcript of the hearing, and all the evidence including oral testimony, documents and other evidence offered and received at the hearing, the following findings of fact are made.

I. Columbian Enameling and Stamping Co.

The Columbian Enameling and Stamping Company is an Indiana Corporation engaged in the manufacture and sale of metal utensils coated with enamel, zinc, tin or other sub-

stances for kitchen, hospital, and laboratory use. It manufactures also wall tile and roof shingles, both enamelware products.

The respondent manufactures its products at its plant in Terre Haute, Indiana. It is one of 19 active competitors in the industry. It employs on the average 600 persons (460). During the period in question there were approximately 600 employees; excluding foremen and clerical workers, a few more than 500 (119). Between the dates of January 1, 1935, and December 9, 1935 the respondent shipped 4,549,695 pounds of its product to 47 states, the District of Columbia and Canada, (451), 85% of its product being shipped outside of Indiana. The plant was closed down from March 23, to July 23, 1935 and its shipments were considerably less than in the prior years, 1933 and 1934. Thus in 1933 it shipped out 302 carloads of its product, in 1934, 385 and the first 11 months of 1935 only 215.

Exclusive of the coal used in the manufacture of its product, and cartons used in shipping the product, a majority of its raw materials are shipped from points outside of Indiana, in all from 20 states (53); including these a majority of the inbound shipments are transported from Indiana (53). Some of the materials originate in Greenland and China (448). The principal materials are sheet steel which serves as the body of the utensil, and chemicals, sand, and clay from which the enamel coating is prepared. Between the dates of January 1, 1935 and December 9, 1935 it shipped into its plant 22,713,000 pounds of various materials. During the years 1933-635 and 1934 inbound materials averaged 500 carloads; in the first 11 months of 1935 there were approximately 286 carloads (53).

In its shipping operations the respondent uses the services of three interstate railroads and eight interstate truckers. It has sales offices in New York, New York, Chicago, Illinois and Los Angeles, California (453). It advertises in national trade journals (455). It has registered with the United States Patent Office a number of trade marks for use in interstate commerce (B.4).

The operations of the respondent constitute a continuous flow of trade, traffic, and commerce among the several states.

II. Relations Between the Union and the Respondent.

1. The Agreement of June 14, 1934.

Federal Labor Union No. 19694, was formed on June 14,

1934 for the purpose of creating an agency for collective bargaining between the respondent and its employees (58), and is a labor organization affiliated with the American Federation of Labor. Membership was limited to the production workers in the plant, that is: all employees exclusive of clerical and supervisory (118) workers. In September 1934 some 450 of the 500 odd production workers were union members (104, 119); in March 1935 membership reached 485 (261).

On July 5, 1934 the union presented an agreement to the respondent. The respondent refused to sign the agreement (59 and 281). The union voted to strike. The union asked the Indianapolis Regional Labor Board, then functioning under the National Industrial Recovery Act, to intervene. Upon the request of the Regional Labor Board, representatives of the union and of the respondent met together with Dr. Beckner, Chairman of the Regional Board (282). The union's proposed agreement (R.-4) was discussed point by point. Upon the basis of the discussion, Dr. Beckner forthwith drafted an agreement which on the same day was signed on behalf of the union, the respondent, and the Regional Board. On the following Monday, (July 16, 1934) the employees did not present themselves for work. Next day plant operation was resumed (286). The agreement (Exhibit A to Answer) provided for seniority, rest periods, "spreading the work", hearing upon dismissal by a committee of employees and management, a minimum of 2 hours pay for any employee required to report for duty, an eight hour day when possible, and a grievance committee. It provided also that "in any case in which a satisfactory settlement of a dispute arising under this contract cannot be reached", such dispute shall be referred to a committee of arbitration "to be composed of 2 management and 2 union representatives, and a fifth person to be selected by these four". The contract was to run for one year. There was a provision that either party desiring to terminate or modify the agreement shall give 30 days' notice in advance of termination.

2. The Check-off Issue.

Acting under its Constitution (P.-15) the union appointed a Scale Committee to deal with the management. On August 8, 1934 the Scale Committee requested the respondent to institute the check-off system on behalf of the union, i. e., the respondent to deduct union dues from the pay of members and remit to the union (287). On August 30, 1935 Mr. Grabbe, General Manager of the respondent, informed the Committee

that a statute of Indiana (2, Burns Indiana Statutes, 1933, Sections 40-201, 202, 203 and 204) prohibited the assignment of wages beyond thirty days, and that to institute the check-off consistently with this statute, each employee member would have to sign a pay deduction form every fifteen days. Mr. Grabbe further informed the Committee that the union would have to pay the administrative expenses involved (289). At a meeting on September 5, 1934, the Scale Committee expressed itself as willing to pay these expenses, but wanted only a single authorization by each employee to cover the period of the Indianapolis agreement (291). On September 18,

1935 Mr. Grabbe told Mr. Cox, a member of the Committee, that the respondent could not accede to this request (293). On October 4, 1935 the respondent sent a circular (P.-7) to all of its employees stating that the check-off system as requested by the Scale Committee was illegal and that the company would not knowingly violate a statute. At a meeting in the middle of October, the Committee pointed out that for ten years the company had been checking off premiums for insurance policies without any pay deduction authorizations (179).

3. The Closed Shop Issue.

On October 1, 1934 the union informed the respondent by letter that all members of the union should be in good financial standing "under penalty of disassociation". (R.-6). On October 4, 1934 the respondent replied by letter asking whether the union intended by its letter of October 1, 1934 to terminate the Indianapolis agreement and whether it meant to say that its members would refuse to work with members who were delinquent in their dues. (R.-7). On October 22, 1934 the union informed the respondent by letter (R.-9) that its letter of October 1, 1934 meant that a delinquent member would lose his "association" rights. On October 23, 1934 the union requested that the agreement be modified (in what respect was not stated), the letter to serve as 30 day notice of modification pursuant to the Indianapolis agreement (R.-11). On October 30, 1934 the respondent replied by letter that it would meet the association on November 23, 1934 to discuss the modification (P.-9). The meeting was postponed to November 26, 1934 at the request of T. N. Taylor, president of the State Federation of Labor, and an organizer for the American Federation of Labor. On that date Mr. Taylor and the Scale Committee, on behalf of the union, met with the respondent's officers. Mr. Taylor stated that the union "would

like to have" a closed shop (306). Mr. Grabbe replied that the respondent could not grant a closed shop; that the closed shop was contrary to the principles under which the company had operated since 1871. Mr. Taylor indicated that the respondent might "forget the matter". (309)

On January 4, 1935 the Scale Committee presented a number of demands (R.-1), among them a demand that the company agree to lay off any member of the union who becomes suspended. On January 21, 1935, by a circular letter (P. 1) to all of its employees, the respondent replied that it would not agree to the aforementioned demand; that suspension is a matter of union business and is not company business; that the union had previously asked for a closed shop and the company had denied it as contrary to the principle of equal opportunity. On February 5, 1935 the union, by letter (R.-14) to the respondent, asked that the proposals of January 4, 1935 be taken to arbitration pursuant to the Indianapolis agreement.

Other Issues.

At a number of meetings between the respondent and the Scale Committee, the issues of wage increases on one hand, and unrest and waste allegedly caused by union activity on the other, came up, sometimes separately, sometimes as connected subjects. At the meeting of November 26, 1934 Mr. Taylor asked for a 20% increase (306). Mr. Grabbe replied that the competitive situation made it impossible, and he testified that he took occasion to "complain bitterly" that the unrest caused in the factory had increased spoilage; due to this cause, he said, it was \$1,500 over normal in July, 1934 and \$5,000 over normal by October, 1934 (307). He attributed the unrest to intimidation, coercion and solicitation for dues. In previous meetings he had admonished the union against activity in the plant during working hours. In its proposals of January 4, 1935, already mentioned (R.-1), the union pledged its aid in the promotion of efficiency and demanded that if at the end of ninety days the present unrest had been eliminated and the production loss had been reduced to a normal minimum, the minimum wage rate for females would be forty cents, for males, forty-five cents, which would apparently have meant a raise. In its circular reply to the proposals of January 4th (P.-1) the respondent replied that the competitive situation made an increase impossible. This, too, was one of the proposals upon which the union asked for arbitration by its letter of February 5th.

At meetings on February 7, 1935 and March 5, 1935 the

Committee claimed that certain employees were entitled to two hours pay on a day when they had been called to work but not employed, because the power plant had broken down. At both meetings officers of the respondent, in reply, referred to the negotiations in connection with the Indianapolis agreement at which the clause providing for pay during a wait caused by breakdown had been eliminated from the agreement¹ (317), (506).

4. The Sending of Circulars to All Employees.

Beginning on October 4, 1934 the respondent sent occasional circular letters to all its employees discussing union proposals. To justify this unusual procedure Mr. Grabbe, testifying at the hearing, stated that many employees had told him that they could get no information from the Scale Committee as to what was going on and asked that they be sent letters or that bulletins be posted (297). In this circular it was said in substance:

A feeling of unrest is not conducive to good work. To those of you who are not quite sure in your minds regarding the company's attitude on matters recently discussed in the factory, I have the following to say, namely: that the company was impartial as between employees belonging and those not belonging to an organization and that the check-off as proposed by the union was illegal.

At the meeting of January 4, 1935, at which the proposals of that date were presented, Mr. Grabbe criticized the Committee for not keeping the membership fully informed.

On January 21, 1935 the respondent sent out the circular letter (P-1) already referred to in which it answered point by point the union's proposals of January 4, 1935. This circular stated that each employee was being given a copy so that he might be informed of the union's request and of the reply made to the Scale Committee. It does not appear, however, that any reply was made to the Scale Committee as such. At the meeting of February 7, 1935 the respondent did discuss the proposals, apparently for the purpose of showing

1. Though it is unnecessary for us to decide this question, as such, it should be pointed out that the provision eliminated set no limit on hours of pay in case of breakdown.

This clause was as follows:

"No piece workers shall be penalized while waiting for material break-down of machinery or any other condition not controlled by the employee".

The clause adopted provides that any employee required to report shall receive a minimum of 2 hours' pay. There is a real question whether this is not applicable regardless of the cause of failure of work. This was not one of the questions on which, specifically at least, arbitration was requested.

that they were not disputes arising under the agreement and so not arbitrable (318). The question arose in this form because, as set forth above, in a letter sent on February 5, 1935 to the respondent, the union had demanded arbitration of its proposals of January 4, 1935. On February 8, 1935 the respondent sent a letter (P.-10) to the union and a circular letter (P.-11) to all its employees stating that the proposals of January 4 dealt with matters not covered by the Indianapolis agreement, were not disputes under it, and were not arbitrable under it. The circular letter concluded:

638 "Our Corporation lawyers advise us that the Scale Committee is acting against the contract when they request that the proposal be submitted to arbitration—under the contract their proposal cannot be taken to arbitration."

On February 9, 1935 the union addressed the respondent by letter (R.-15) as follows:

"It was moved unanimously * * * that the company deal directly with the scale committee * * * in matters concerning said union and not individually through the mail. As the union has a personnel of 476 we know exactly what is taking place. We do not want the information given to foremen and non-members. This is only to comply with Section 7 A (Collective bargaining) of the National Recovery Act * * *."

"If this action is taken again this body will consider such action as discrimination and deal with it as such regardless."

On February 19, 1935 the respondent replied by letter to the union (P.-12) and a circular letter to its employees (P.-13). The respondent stated that misunderstanding often causes "deserving, efficient and loyal employees of a company to lose their jobs through agitation and strikes which they do not instigate" and which arise from individual misinformation; that all employees were entitled to be advised on developments of labor policy in the plant; that, in the words of the President of the United States, employees were to be free from coercion "from any source" and this meant free from agitators who tried to coerce unorganized workers to join some particular organization; that the Scale Committee "during the past few months seems to have made up its mind that it wants to manage not only the company, but all the employees working for it;" that all the disturbance boils down to the basic issue of more pay but that competitive conditions made that impossible.

At a meeting between the Scale Committee and the respondent on March 5, 1935 the Committee protested against the use

of circulars (323). After discussion Mr. Grabbe, for the respondent, agreed to read to the Committee any circulars to be sent and allow the Committee to state objections and make changes accordingly where possible. The Committee felt that in one of the circulars the words "scale committee" had been used with slurring intention. The respondent agreed to post a letter correcting this impression; this was done (324).

III. The Strike and the Attempt to Settle It.

1. The Strike.

On March 11, 1935 the Scale Committee and Mr. Taylor met with the respondent. Mr. Taylor (507) wished to discuss the proposals of January 4, 1935, some of which have already been considered above. These proposals and the answers given by the respondent, under the signature of Werner Grabbe, General Manager, in its circular letter of January 21, 1935 were in substance as follows: Proposal 1. The union agrees to cooperate with the company in mutual aid for efficiency. Answer: "We, who are the employees of the company", are obligated to work for the company with each other. None of us is required to join any organization. Proposal 2. The foreman is to report anyone lax in his duty to the Committee which will investigate and assist in correcting the condition. Answer: Cannot agree; company must have full control in this matter. Proposal 3. Company shall post a notice that the union represents a majority and is the bargaining committee for all employees of the plant. Answer: Cannot agree; any group of employees free to discuss problems with the management. Proposal 4. Employees shall correct certain bad work but with specified exceptions. Answer: This represents the present practice. Proposal 5. Committees shall not discuss grievances during working hours unless called on by foreman. Answer: This represents the present practice. Proposal 6. Committee 639 agrees to cooperate with company in enforcing all shop rules agreed to by both. Answer: Making and enforcing of company rules is management's responsibility. Proposal 7. The company agrees to lay off any member of the union who becomes suspended. Answer: Cannot agree. Proposal 8. If at end of 90 days, present unrest has been eliminated and production loss reduced to normal minimum, company agrees to certain minimum wages. Answer: Cannot agree.

As noted above, the union, after the respondent's answer to

these proposals had asked for arbitration of them under the Indianapolis agreement and the respondent had replied that they were not arbitrable thereunder. Once before in November, 1934 the respondent had taken the same position with respect to the arbitration of a proposed wage increase (63-65). At the meeting of March 11th the respondent announced that it had given its final answer to the January 4th proposals, and again explained its reasons (509).

On March 17, 1935 the union sent the respondent a copy of resolutions (P.-2) adopted by it. The resolutions recited breaches of the Indianapolis agreement by the respondent in that (a) it had failed to live up to the provision for two hours' minimum pay² and (b) it had failed to arbitrate in accordance therewith. They accused the respondent of "violating every principle of collective bargaining"; of seeking to damage the union by questioning the loyalty, honesty and intelligence of the Committee and insinuating that its organizer was an agitator (referring to the circular of February 19, 1935). (See *supra* heading: *Circulars, etc.*) The resolutions conclude that in the interests of peace and harmony, the members will not continue to work with anyone eligible for union membership who does not become a member on or before March 23, 1935.

On March 23, 1935 the strike was called (75). Of the union members, approximately 450 walked out on this day; the union permitted 35 men in the power house to remain at work (269). On March 30, 1935 the respondent announced that the factory was closed indefinitely (R.-16).

2. Attempts to Settle Strike.

On March 23, 1935 a conciliator from the Department of Labor, one Mythen, undertook to settle the strike. According to the testimony of Mr. Grabbe, for the respondent, Mythen stated that all that the union wanted was a closed shop, and that that was not an unreasonable demand (393). The respondent rejected the proposal and Mythen gave up his attempt (202).

On or before May 10, 1935 the Mayor of Terre Haute requested the respondent to meet with him and union representatives. The respondent declined. In its letter (P.-14) to the Mayor it pointed out that the union demanded a closed shop; that it could not accede and a meeting would be useless. It concluded: "If the union calls off the strike, the factory will be reopened promptly without discrimination or

(2) See footnote No. 1 *supra*.

reduction in wages, but only as an open shop *without union recognition or agreement*". (Italics added.)

On June 7, 1935 the respondent placed in three Terre Haute newspapers (384) an advertisement, reciting that the strike had been called to force the company to discharge nonunion employees. The advertisement then stated (R.-17) "The company is willing to operate its plant, using former employees, without discrimination against union members and without change in wages, but only as an open shop *without union recognition or agreement*. The above are the conditions under which the company has operated for 33 years to the general satisfaction of the employees. If the plant cannot be operated under these conditions, it will be closed indefinitely." (Italics added.)

On the same day (June 7, 1935) three members of the Scale Committee requested by letter (P.-4) a meeting with the respondent. It stated that "Our membership is convinced that no controversy is so great that cannot be settled 640 across the conference table."

On June 11, 1935 three members of the Scale Committee met Mr. Gorby, Mr. Gorby, Junior, and Mr. Grabbe, officers of the respondent, at a Terre Haute hotel. Grabbe reiterated the stand taken in the company's advertisement of June 7th. The men could come back but without recognition of the union (484) and without any agreement (386, 78) and that if they didn't want their jobs back, he would get somebody else (80). There was no expressed difference of opinion as to wages and working condition (387, 481). The issue of closed shop was discussed through Mr. Gorby, the president of the respondent, could not remember who brought it up (484). According to the testimony of Grabbe, the Committee stated a. the conclusion "that they would come back to work but only under their own conditions * * * and that they would report the conversation to the body and report back to us the action of the body." (385)

From the beginning of the strike the union had picketed the plant (337). On July 19, 1935 forty company men were escorted into the plant by four police cars (85, 86, 343). The police pointed guns at the pickets while the trucks bearing the men went into the grounds. Thereupon enormous crowds gathered outside of the plant. On July 22, 1935 the Central Labor Union called a general strike of all labor in the city of Terre Haute. It appears from a statement terminating the general strike inserted on July 23, 1935 in the Terre Haute

Star (introduced by the respondent) (R.-2) that the strike was called in protest against the use of city police and the militia. During the evening of July 22 there was a crowd outside the plant estimated at 15,000 persons (362) among them some 200 to 300 strikers (362). "Missiles" were thrown at the plant (367). At 11:15 P. M. 750 militia were marched into the plant (369) and martial law was proclaimed (89). Picketing was forbidden (89, 369) and not resumed until August 4, 1935 (370).

On July 23, 1935 two labor conciliators from the Department of Labor, Richardson and Scheck, appeared in Terre Haute. The union requested them "to try and open up negotiations with the respondent" (190, 213). On the same or the next day these two men met with Mr. Gorby, president of the respondent. They conferred for three hours. Mr. Gorby was requested to meet the Scale Committee, and agreed (491). The conciliators reported this to the union (213). Several days later Mr. Gorby told the conciliators he would not have a meeting with them or the Scale Committee (491).

On July 23, 1935 the respondent resumed operations at its plant (373). Between that date and August 19, 1934 it had received 3,000 applications for employment (375). Mr. Grabbe, general manager of the respondent, estimated that on or about August 19, 1934, 190 of the production employees of March 23rd (the day of the strike) had returned (425). By the second week in September, 1934 the respondent had employed a full force (375).

As early as May 20 company foremen approached individual workers and sought to induce them to return to the employ of the respondent (138). They were more active in July, both before and after (549) the opening of the plant. One foreman solicited as many as 100 men (531); another saw many but did not know how many (548). One soliciting foreman had been reemployed in June (583). After July 23rd a number of those foremen were in the employ of the company. Under these circumstances, testimony of the

(3) The respondent objected to this testimony on the ground that the conversation between the union and the conciliators does not "bind" the respondent (93) and again on the ground that it does not appear that the conciliators told Mr. Gorby that the union had made a request for the meeting (494). Mr. Gorby testified that the conciliators asked him to meet with the Scale Committee and that he knew the purpose of the requested meeting. Since it appears that the conciliators were entrusted by the union with a mission, duly met with the respondent in pursuance thereof, and reported back to the union as to the result, it is a proper inference that Mr. Gorby knew of their trust. Consequently the evidence of the witnesses Cox and Heuer to which objection was taken is properly part of the record.

foremen that they were not instructed by the respondent to solicit seems entitled to little or no weight. One worker was told by a foreman that there would be no union in the plant (232); this was not denied. Another was told substantially the same thing (139); this was not effectively denied (523).

On September 20, 1935, and again on October 11, 1935, the union wrote to the respondent (P.-5) asking for a meeting to settle the controversy between them, both of which the respondent received, but to neither of which it replied (492). In the latter part of October, 1935, the union asked Max Schaefer, vice president of the Central Labor Union of Terre Haute (248), to contact the respondent⁴ (214) and on October 28, 1935 he met Mr. Gorby (252), represented that he had come on behalf of the union (492), and sought to work out an arrangement whereby the striking employees could be returned to work. He suggested that new men taken on since July 23rd be discharged to make place for the strikers. Mr. Gorby stated that he could not agree to that proposal, but that any strikers might sign an application for employment and would be employed when needed (253-4).

3. The Unfair Labor Practices.

The complaint alleges and the answer denies that on July 22, September 30, and October 11, 1935 the respondent refused to bargain with the representatives of its employees.

It is unquestioned that on July 23, 1935 the respondent informed the labor conciliators, Scheck and Richardson, that it would meet with the Seale Committee and that a few days later the respondent advised the conciliators that it would not meet either the conciliators or the Seale Committee. It seems clear that Mr. Gorby, president of the respondent, knew that the union was seeking through the conciliators to bargain with the respondent with respect to the settlement of the strike. The union represented an overwhelming majority of the employees in March; practically all had struck and were still on strike. The respondent admits (Brief p. 9) that the membership of the union has not been reduced. On July 23rd the respondent had opened its plant but did not have its full quota of employees until nearly two months later. It would seem clear, therefore, that at this time the union represented a majority of the respondent's employees, that it sought to bargain with the respondent, that the respondent refused to

(4) The respondent objected to this testimony on the ground that it does not anywhere appear that Schaefer told Gorby that he (Schaefer) had been authorized by the union to seek a meeting (494). Gorby admitted that Schaefer had stated that he came "on behalf of the union" (492).

so bargain, and that this constituted an unfair labor practice within the meaning of Section 8, subdivision (5) of the Act.

To this conclusion the respondent opposes two objections. First: The men on strike were not employees on July 23rd. Second: The Union was attempting to force a closed shop upon the respondent.

Section 2 (3) of the Act provides that the term "employee" shall include "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment."

642 The respondent maintains that the strike was in violation of the Indianapolis agreement and so illegal; and therefore the employees lost their status as such by striking. The agreement contains no provision against a strike except when a dispute under the agreement is being arbitrated, and the respondent has at all times maintained that the dispute was not arbitrable under the agreement. Furthermore, the Union had many months before given 30 days notice of termination in accordance with the agreement.

The respondent argues that the strike was illegal also for the reason that it was for a closed shop. Under the law of Indiana, however, it would seem that a strike for a closed shop (admitting the strike to have been such) is considered a justifiable attempt to advance the legitimate interests of the members of the Union and is legal. *Shaughnessy v. Jordan*, (1916) 184 Ind. 499, 111 N. E. 622. Furthermore the Act makes no distinction based on the issue involved in the labor dispute. An individual whose work has ceased in connection with "any" current labor dispute continues to be an employee for the purposes of the Act.

The labor dispute in question was "current" at the time when in late July the strikers sought to exercise their rights under the Act. The respondent defines "current" as "existing at the present time". It is at the time when the individual seeks to assert his rights as an employee that the dispute must be current. From March 23rd to July 23rd the strike was actively prosecuted and was effective in keeping the plant closed down. The strikers picketed the plant without interruption. The Scale Committee on a number of occasions pressed the union's claims. On July 23rd the president of the respondent met and talked with the conciliators of the Department of Labor and agreed to meet the Scale Committee. Apparently the respondent was at that time aware that

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a labor dispute existed. In *Dail-Overland Company v. Willys-Overland, Inc.*, 265 Fed. 171 cited by the respondent, the Court said (p. 188)

"As long as conditions are such that what is called 'settlement' might seem reasonably possible between the company and its late workmen, the latter, it seems should be considered 'employes'; within the meaning of that term in the Clayton Act".

These words are strictly applicable here. The Act seeks by its remedies to promote industrial harmony. The Act recognizes that the need for these remedies is no less acute after than before a strike, and that the need continues until harmony is restored.

The respondent invokes the rule of statutory construction that "laws are not to be considered as applying to cases which arose before their passage". Our decision does no violence to that rule. The case in question is the refusal of the respondent to bargain collectively in late July with its employees. The *Dail-Overland* case (*supra*) cited by respondent is authority for the proposition that an individual does not lose his employee status as long as a strike is current. When Congress passed this Act the strikers had the status of employees. We now hold that a refusal to bargain with such employees after July 5, 1935, the date when the Act was approved, is a violation.

The respondent points to the additional requirement of the definition in the Act to the effect that the individual be one who has not obtained other employment and contends that it does not positively appear that any of the strikers were still unemployed. It is not necessary that all of the strikers have remained unemployed; those, whatever number, still unemployed were entitled to bargain. There is considerable evidence indicating that many were unemployed. Some of respondent's witnesses solicited over 100 of them to return to the plant, and one of respondent's officers testified that over 200 so returned. Up until July 23rd large numbers of them picketed the plant. When respondent sought to re-open its plant with non-union men, a general strike of all labor in Terre Haute was called. Such a decisive demonstration of sympathy would hardly have made if the strikers were all employed elsewhere. The many letters sent by the Scale Committee to the respondent both before and after July 23rd, the union's statement in the newspapers as late as August 28 that the strike still continued, all evince an

activity and desperate determination inconsistent with employment elsewhere.

We are now brought to the respondent's second contention that the union was seeking to force the respondent to accept a closed shop. This in itself seems irresponsible to the issues but it is probable that the respondent seeks to argue thereby that the union was adamant in its demand for a closed shop; that negotiation was therefore futile; that the possibilities of collective bargaining had been exhausted; and that no settlement of the strike could reasonably have been anticipated.

The specific question to be asked is whether on July 23, 1935 the respondent was justified in believing that further negotiation would be fruitless and settlement of the strike beyond reasonable probability. We think that it is quite clear that the respondent was not so justified.

It is true that on a number of occasions the union made attempt to secure a closed shop or concessions tantamount to a closed shop. It resolved on March 17, 1935 one week prior to the strike that it would not work with non-members. The respondent claims that furthermore, the closed shop was the only issue. This is not strictly true. It is true that the demand for wage increases was not being strongly pressed; and that the complaint as to the respondent's use of circular letters had been temporarily composed. But the disputes over the application of the 2 hour minimum pay clause of the Indianapolis agreement and of the application of the arbitration clause to the propositions of January 4th were both mentioned in the union pre-strike resolution of March 17th.

Much more important, however, is the point that after the strike the respondent raised a new issue which precluded the negotiation of any agreement whatsoever. In its letter of May 10th to the Mayor refusing to meet with him and the Scale Committee it announced that the men could come back but without Union recognition or agreement. In its advertisements of June 7th it repeated this stand and again on June 11th it reiterated this in the conference between it and the Scale Committee. The meeting of June 11th was by no means a clear deadlock on the closed shop issue. The Committee reasserted its demand for a closed shop. The respondent's officers stated that the closed shop could not be granted, that the men could come back but without union recognition and that if they didn't want their jobs back they would get somebody else. According to the respondent's witnesses, the committee stated at the conclusion that they would come back only on their own conditions but would report the conversa-

tion to their constituency and report back to the respondent. It is equally consistent with the facts that this meeting failed by reason of the union's insistence on the closed shop or by reason of the respondent's insistence that it would make no agreement with the union at all.

Between July 19th and 23rd there occurred a series of events which gave the respondent great advantages over its striking employees. Martial law was declared, and picketing was prohibited.

Circumstances had so changed since June 11th that even if at that time the union had clung to its closed shop demand, it was improbable it would do so any longer; the union sought to approach the respondent through conciliators, through persons primarily interested in composing differences; ostensibly its mood was conciliatory, its principal interest in settling the strike. Under all these circumstances, the respondent could not reasonably have believed that collective bargaining would necessarily have been futile. And indeed the respondent, it-

self, seems on July 23rd to have believed otherwise and 644 to have advised the conciliators that it would meet with the Committee.

That the respondent was under a duty to meet with the Committee, if settlement were possible, seems clear. The Act requires the employer to bargain collectively with its employees. Employees do not cease to be such because they have struck. Collective bargaining is an instrument of industrial peace. The need for its use is as imperative during a strike as before a strike. By means of it, a settlement of the strike may be secured.

It is our opinion that the respondent's refusal to meet with the Committee after it promised to do so, resulted from its realization that it could in any case open its plant and that to do so without dealing at all with the union would discourage active support of the union and render it useless. The respondent since May 10th had by letter, by public advertisement, and by word of mouth stated that it would neither recognize nor make any agreement with the union. In its advertisement of June 11th the respondent stated that for 33 years it had operated without union recognition or agreement, a statement which ignored the Indianapolis agreement and suggested that the respondent did not regard its obligations thereunder seriously. It will be remembered that even this agreement was won only on threat of strike, that thereafter in negotiation not a single demand of the union was ever granted, that all efforts of the union to strengthen itself were

resisted, and that the respondent by its circular notices spoke over the heads of the union to its members. After the strike the respondent gave clear expression to its hostility and took advantage of the situation to make effective this hostility.

During July it solicited the strikers individually to return to work, and told some of them that it would not deal with the union. It secured the aid of the police in opening its plant. On July 23rd it no longer had pickets to contend with and application for employment were numerous. On the same day it agreed to meet the Committee. Nevertheless, though it was now in contact with its employees' representatives, though negotiations had been initiated looking to the settlement of the strike, the respondent continued to solicit individual employees to return to work and at the same time refused to engage in the negotiations. Thus, the employees and no channel through which to arrange their return to work as an organized group, conformably to the decision of that group. By its tactics, the respondent emasculated the union as an effective instrument of employee representation. We hold that by so doing, it has engaged in unfair labor practices within the meaning of Section 8, subdivisions (1) and (5) of the act. It will be unnecessary to make any decision with respect to the charges of refusal to bargain on September 20 and October 11, 1935. These unfair labor practices have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

A question arises as to the form of relief. It would be futile simply to order the respondent to bargain with the union since the plant now has its full quota of men and the process of bargaining could yield little comfort to those who are not employed; nor do we know whether the union now represents a majority. Under these circumstances we must restore, as far as possible, the situation existing prior to the violation of the Act, in order that the process of collective bargaining, which was interrupted, may be continued.

It is apparent that a number of those who were on strike are still unemployed by the respondent or at substantially equivalent employment elsewhere, and that on the other hand, there are at present employed in the plant a number of individuals who were not so employed at the time of the strike on March 23, 1935.

The purpose of the conference proposed by the conciliators on July 23 was to settle the strike and to put the men back to work. It does not lie in the mouth of the respondent to say that this result would not necessarily

have followed. The law imposed a duty to bargain under these circumstances because that result might have followed. It is respondent's conduct which has precluded that possibility. Therefore, we shall order the respondent to discharge from its employment all production employees who were not employed on July 22, 1935 and reinstate to the vacancies so created individuals who were so employed and have not since received substantially equivalent employment elsewhere.

Conclusions of Law.

Upon the foregoing findings of fact, the following conclusions of law are made.

1. The Enameling and Stamping Mill Employees Union No. 19694 (the Union) is a labor organization, as defined in Section 2, subdivision (5) of the Act.

2. All the departments of the Terre Haute Plant of the respondent with the exception of the office and clerical departments constitute a unit appropriate for the purposes of collective bargaining, within the meaning of section 9 (b) of the Act.

3. On or about July 23, 1935, the respondent refused to bargain collectively with the union as the representative of its employees, or at all, and by reason of such refusal has engaged in an unfair labor practice within the meaning of Section 8, subdivision (5).

4. On or about July 23, 1935, the respondent interfered with and restrained its employees in the exercise of their right to self-organization and to engage in concerted activities for the purpose of collective bargaining and other mutual aid and protection, as guaranteed by Section 7 of the Act, and by reason of such conduct has engaged in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act.

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Order.

On the basis of the findings of fact and conclusion of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, the Columbian Enameling & Stamping Company, and its officers and agents, shall take the following action, which the Board finds will effectuate the policies of the Act:

1. Discharge from its employment all production employees who were not employed by it on July 22, 1935, and reinstate to the vacancies so created individuals who were so employed and have not since received substantially equivalent employment elsewhere and place the remainder of such individuals on a list to be called for reinstatement as and when their labor is needed.

2. Upon reinstating its employees as required in paragraph 1 of this order, shall cease and desist from refusing to bargain collectively with Enameling & Stamping Mill Employees Union, No. 19694 as the exclusive representative of the production employees employed by respondent in respect to rates of pay, wages, hours of employment and other conditions of employment.

3. File with the National Labor Relations Board on or before the thirtieth day from the date of service of this Order, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

Signed at Washington, D. C.

This 14th day of February, 1936.

J. Warren Madden

Chairman

John M. Carmody

Member

Edwin S. Smith

Member

National Labor Relations Board.

(Seal)

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* * (Caption—C-14) *

AFFIDAVIT AS TO SERVICE.

District of Columbia } ss.

I, Ada A. Gunderson, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the fourteenth day of February, 1936, I mailed postpaid, bearing Government frank, by registered mail, a copy

Affidavit as to Service.

of the Decision to the following named persons, addressed to them at the following addresses:

830162—

Otto A. Jaburek, Esq.,
35 East Wacker Drive,
Chicago, Illinois

830161—

Maurice J. Niceson, Esq.,
Grand Opera Building,
Terre Haute, Indiana

Ada A. Gunderson.

Subscribed and sworn to before me this 17th day of February, 1936.

John E. Lawyer. (Seal)

648 Penalty for Private Use to Avoid Payment
Post Office Department of Postage, \$300

Postmark of Delivering
Office

Official Business Chicago, Ill.

Feb 17

Registered Article 2 30 PM

No. 830162 1936

Insured Parcel Old P. O. Annex

No.

Return to National Labor Relations Board
(Name of Sender)

Street and Number.

or Post Office Box.

Washington,

D. C.

Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Otto A. Jaburek
(Signature or name of addressee)

Mary Barber
(Signature of addressee's agent)

Date of delivery 2/17, 1936

649 Penalty for Private Use to Avoid Payment
of Postage, \$300

Post Office Department	Postmark of Delivering Office
Official Business	Terre Haute
Registered Article	Feb 17
No. 830161	6 30 PM
Insured Parcel	1936
No.	Ind.
Return to National Labor Relations Board (Name of Sender)	
Street and Number, or Post Office Box, _____	
Washington,	
D. C.	
Return Receipt	

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Maurice J. Nicolson

(Signature or name of addressee)

Marian Noble

(Signature of addressee's agent)

Date of delivery Feb. 17, 1936.

60 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

National Labor Relations Board.

Petitioner:

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Columbian Enameling & Stamping

Co., Inc.,

Respondent.

October Term, 1936

**CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD.**

The National Labor Relations Board, by its secretary, duly authorized by Article VI, sec. 1 of the Rules and Regulations of the National Labor Relations Board, does hereby certify

that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding before said Board entitled "In the Matter of Columbian Enameling and Stamping Co. and Enameling and Stamping Mill Employees Union, No. 19694", the same being Case No. C-14 before said Board, said transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of charge made by Enameling and Stamping Mill Employees Union No. 19694 filed October 31, 1935.

(2) Copy of Complaint and Notice of Hearing issued by National Labor Relations Board, issued November 21, 1935.

(3) Copy of Answer of respondent, filed December 2, 1935.

(4) Copy of order of the National Labor Relations Board designating Daniel M. Lyons Trial Examiner, dated December 3, 1935.

(5) Documents hereinabove listed under items 1-3, inclusive, are contained in Board's Exhibits 1 and 2, included under the following item:

Stenographic report of hearing before Daniel M. 651 Lyons, Trial Examiner for National Labor Relations Board on December 9, 10 and 11, 1935, including exhibits or copies thereof introduced in evidence.

(6) Copy of order transferring proceeding to National Labor Relations Board, on December 16, 1935.

(7) Copy of motion and affidavit in support thereof, filed December 27, 1935, moving for an extension of time within which respondent might file its brief.

(8) Copy of decision, findings of fact, and conclusions of law and order of National Labor Relations Board, dated February 14, 1936, together with affidavit of service and United States Post Office return receipt thereof.

In testimony whereof, the secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 26th day of June, 1937.

s/ Benedict Wolf.

Benedict Wolf.

(Seal)

*Secretary, National Labor Relations
Board.*

Endorsed: Filed July 9, 1937, Frederick G. Campbell.
Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Entered 3
7-182

For the Seventh Circuit.

Tuesday, July 27, 1937.

Court met pursuant to adjournment.

National Labor Relations Board,
Petitioner.

6324 *vs.*
Columbian Enameling & Stamping Co., Inc., October Term, 1936
 Respondent.

ORDER.

Upon stipulation of the parties and having heard counsel and due consideration having been given, it is ordered that the printed record in the above named case consist of the following:

1. The transcript of testimony as certified to the Court by the National Labor Relations Board in the matter before it known as Case No. C-14.

2 Documents included in Board's Exhibit 1, as follows: Charge, Complaint, Notice of Hearing, and Answer of Respondent, and

It is further ordered that none of the exhibits need be printed except those described above and included in Board's Exhibit 1, but shall be considered along with and part of the record, with the privilege reserved to either party to have any of the exhibits printed and included in the printed record in the event that appeal is later taken, and

It is further ordered that the National Labor Relations Board submit to the Court the aforelisted and described physical exhibits.

By the Court,

Samuel Alschuler.

United States Circuit Court Judge.

Dated: July 27, 1937.

Endorsed: Filed July 27, 1937, Frederick G. Campbell,
Clerk.



On September 2, 1937 there was filed in the office of the Clerk of the United States Circuit Court of Appeals a certified copy of Amendment to Decision, which is in the following words and figures, to-wit:

UNITED STATES OF AMERICA,

NATIONAL LABOR RELATIONS BOARD.

Filed Sept. 2, 1937. Frederick G. Campbell, Clerk.

I, F. M. Stern, Assistant Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of: The Amendment to Decision issued July 27, 1937, in the Matter of Columbian Enameling & Stamping Company, and Enameling & Stamping Mill Employees Union, No. 19694, Case No. C-14.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 25th day of August, A. D. 1937, at Washington, D. C.

B. M. Stern,

B. M. Stern,

(Seal)

Assistant Secretary.

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of

Columbian Enameling & Stamping Company and Enameling & Stamping Mill Employees Union, No. 19694. } Case No. C-14.

Mr. Melvin C. Smith for the Board.

Mr. Otto A. Jaburek, of Chicago, Ill. and Mr. Josiah T. Walker, Mr. Louis R. Hilleary, and Mr. Wilson N. Cox, of Terre Haute, Ind., for the respondent.

Mr. Maurice J. Niceson for the Union.

Mr. Louis L. Jaffe, of counsel to the Board.

AMENDMENT TO DECISION.

On February 14, 1936 the National Labor Relations Board, herein called the Board, after the filing of a charge by Enam-

eling & Stamping Mill Employees Union, No. 19694, herein called the Union, and a hearing held, issued a decision in the above entitled case.

In the decision, under heading III 2. Attempts to settle strike, the following paragraph appears:

On July 23, 1935 the respondent resumed operations at its plant. Between that date and August 19, 1934 it had received 3,000 applications for employment. Mr. Grabbe, general manager of the respondent, estimated that on or about August 19, 1934, 190 of the production employees of March 23rd (the day of the strike) had returned. By the second week in September 1934 the respondent had employed a full force.

It having been called to the attention of the Board that the three references to dates in the year 1934 should be to the year 1935, and appear in their present form only as a result of typographical errors, the Board hereby amends the aforesaid paragraph to read:

On July 23, 1935 the respondent resumed operations at its plant. Between that date and August 19, 1935 it had received 3,000 applications for employment. Mr. Grabbe, general manager of the respondent, estimated that on or about August 19, 1935, 190 of the production employees of March 23rd (the day of the strike) had returned. By the second week in September 1935 the respondent had employed a full force.

Signed at Washington, D. C. this 27 day of July 1937.

(S) J. Warren Madden,

Chairman,

(S) Edwin S. Smith,

Member,

(S) Donald Wakefield Smith,

Member,

(Seal)

National Labor Relations Board.

UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SEVENTH CIRCUIT

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 400, inclusive, contain a true copy of the printed record, printed under my supervision and filed on August 12, 1937, which, together with the original exhibits in this cause, constitutes the record on which the following entitled cause was heard and determined: National Labor Relations Board, Petitioner vs. Columbian Enameling and Stamping Company, Inc., Respondent. No. 6324, October Term, 1937, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 30th day of June A. D. 1938.

[SEAL]

FREDERICK G. CAMPBELL,
*Clerk of the United States Circuit
Court of Appeals for the Seventh Circuit.*

In the United States Circuit Court of Appeals for the Seventh Circuit

At the October Term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court House in the City of Chicago, on the Sixth Day of October, in the Year of our Lord One Thousand Nine Hundred and Thirty-Six, and of our Independence the One Hundred and Sixty-First.

6324

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

COLUMBIAN ENAMELING AND STAMPING COMPANY, INC., RESPONDENT

Petition for Enforcement of Order of the National Labor Relations Board

And on, to wit, the 9th day of July 1937, there was filed in the office of the Clerk of this Court a petition for the enforcement of an order of the National Labor Relations Board, which said petition is not copied here as the same appears on pages 1 to 4 inclusive of the printed record in this cause certified herewith under a separate certificate.

And on the same day, to wit, the 9th day of July 1937, there was filed in the office of the Clerk of this Court a certificate of the Na-

tional Labor Relations Board, which said certificate is not copied here as the same appears on pages 395 and 396 of the printed record in this cause certified herewith under a separate certificate.

And afterwards on, to wit, the 13th day of July 1937, the following further proceedings were had and entered of record:

Tuesday, July 13, 1937

Court met pursuant to adjournment before Hon. Samuel Alschuler Circuit Judge.

6324

NATIONAL LABOR RELATIONS BOARD

vs.

COLUMBIAN ENAMELING & STAMPING CO., INC.

Petition for Enforcement of Order of the National Labor Relations Board

A petition for the enforcement of an order of the National Labor Relations Board in the above entitled cause having been filed in this Court and a transcript of the proceedings before the said Board having also been filed,

It is ordered that the Clerk of this Court mail to the Columbian Enameling & Stamping Company, Inc., the respondent herein, Terre Haute, Indiana, and to their attorneys, Mr. Otto A. Jaburek, 35 East Wacker Drive, Chicago, Illinois, and Messrs. Josiah Walker, Lewis R. Hilary and Wilson N. Cox, Terre Haute, Indiana, a notice of the filing of the said petition for enforcement and a transcript of proceedings in this Court.

And on the same day, to wit, the 13th day of July 1937, there was filed in the office of the Clerk of this Court a proof of service of notice to respondent, which said proof of service is in the words and figures following:

In the United States Circuit Court of Appeals for the Seventh Circuit

Tuesday, July 13, 1937

6324

National Labor Relations Board

vs.

Columbian Enameling & Stamping Company, Inc.

Petition for Enforcement of Order of the National Labor Relations Board

Proof of service of notice to respondent of the filing of petition for enforcement.

To COLUMBIAN ENAMELING & STAMPING COMPANY, INC.,

Terre Haute, Ind.

Mr. OTTA A. JABUREK,

55 East Wacker Drive, Chicago, Ill.

Messrs. JOSIAH T. WALKER, LEWIS R. HILARY, and WILSON N. COX,
Attorneys at Law, Terre Haute, Ind.

You are hereby notified that a petition for the enforcement of an order of the National Labor Relations Board entered on February 4, 1936, by said Board in the matter of the Columbian Enameling & Stamping Co. and Enameling and Stamping Mill Employees Union No. 19694, the same being case No. C-14, before said Board, and also a transcript of the proceedings before said Board in said cause, were filed in this Court on July 9, 1937.

This notice is sent to you pursuant to the order of this Court entered this 13th day of July 1937.

FREDERICK G. CAMPBELL,

*Clerk, U. S. Circuit Court,
of Appeals for the Seventh Circuit.*

Copies of this notice mailed to the above named Columbian Enameling & Stamping Co., Inc., Otta A. Jaburek, Josiah T. Walker, Lewis R. Hillary, and Wilson N. Cox this 13th day of July 1937.

FREDERICK G. CAMPBELL, Clerk.

[ENDORSED:] Filed July 13, 1937. Frederick G. Campbell, Clerk. And afterwards on, to wit, the 27th day of July 1937, there was filed in the office of the Clerk of this Court a stipulation, which said stipulation is in the words and figures following:

In the United States Circuit Court of Appeals for the Seventh Circuit

6324. October Term, 1936

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

COLUMBIAN ENAMELING & STAMPING CO., INC., RESPONDENT

Stipulation

It is hereby stipulated and agreed by and between the attorneys in the above entitled cause that the printed record in said cause consist of the following:

1. The transcript of testimony as certified to the Court by the National Labor Relations Board in the matter before it known as Case No. C-14.
2. Documents included in Board's Exhibit 1, as follows: Charge, Complaint, Notice of Hearing, and Answer of Respondent.

It is further stipulated and agreed that none of the exhibits need be printed except those described above and included in Board's Exhibit 1, but shall be considered along with and part of the record, with the privilege reserved to either party to have any of the exhibits printed and included in the printed record in the event that appeal is later taken.

Dated at Washington, D. C., this 10th day of July 1937.

CHARLES FAHY, *General Counsel,*
National Labor Relations Board.

Dated at Chicago, Illinois, this 26th day of July 1937.

EARL F. REED,
JOHN E. LAUGHLIN, JR.,
OTTO A. JABUREK,
Attorneys for Respondent.

[Endorsed:] Filed July 27, 1937. Frederick G. Campbell, Clerk.

And on the same day, to wit, the 27th day of July 1937, an order relative to printing the record was entered in this Court, which said order is not copied here as the same appears on page 397 of the printed record in this cause certified herewith under a separate certificate.

And afterwards on, to wit, the 13th day of August 1937, there was filed in the office of the Clerk of this Court the answer of the respondent to the petition of the National Labor Relations Board, which said answer of respondent is not copied here as the same appears on pages 4a to 4d inclusive of the printed record in this cause certified herewith under a separate certificate.

And afterwards on, to wit, the 2nd day of September 1937, there was filed in the office of the Clerk of this Court a stipulation, which said stipulation is in the words and figures following:

In the United States Circuit Court of Appeals for the Seventh Circuit

6324. October Term, 1936

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

COLUMBIAN ENAMELING & STAMPING CO., INC., RESPONDENT

Stipulation

It is hereby stipulated and agreed by and between the above named parties through their respective attorneys that the "Amendment to Decision", signed at Washington, D. C. on July 27, 1937 by the National Labor Relations Board, be included as part of the record before this Court.

It is further stipulated and agreed that the decision of the National Labor Relations Board, rendered by the National Labor Relations Board on February 14, 1936, and which decision petitioner is herein seeking to enforce, be amended in accordance with said "Amendment to Decision."

It is further stipulated and agreed that said "Amendment to Decision" be included as part of the printed record but that this stipulation and any order of the Court entered thereon need not be included in the printed record.

Dated at Washington, D. C., this 16th day of August 1937.

CHARLES FAHY, *General Counsel,*
National Labor Relations Board.

Dated at Chicago, Illinois, this 16th day of August 1937.

EARL F. REED,
JOHN E. LAUGHLIN, JR.,
OTTO A. JABUREK,
Attorneys for Respondent.

[Endorsed:] Filed Sep. 2, 1937. Frederick G. Campbell, Clerk.
And on the same day, to wit, the 2nd day of September 1937,
the following further proceedings were had and entered of record:

Thursday, September 2, 1937

Court met pursuant to adjournment before Hon. William M. Sparks, Circuit Judge.

6324

NATIONAL LABOR RELATIONS BOARD

vs.

COLUMBIAN ENAMELING & STAMPING CO., INC.

Petition for Enforcement of Order of the National Labor
Relations Board

This matter having come on to be heard upon stipulation of the above named parties through their respective attorneys, and due consideration having been given,

It is hereby ordered that the "Amendment to Decision", signed in Washington, D. C., on July 27, 1937, by the National Labor Relations Board, be included as part of the record before this Court.

It is further ordered that the decision of the National Labor Relations Board, rendered by the National Labor Relations Board on February 14, 1936, and which decision petitioner is herein seeking to enforce, be amended in accordance with said "Amendment to Decision."

It is further ordered that said "Amendment to Decision" be included as part of the printed record but that the stipulation and order entered thereon need not be included in the printed record.

And on the same day, to wit, the 2nd day of September 1937, there was filed in the office of the Clerk of this Court a certified copy of amendment to decision, which said certified copy of amendment to decision is not copied here as the same appears on pages 399 and 400 of the printed record in this cause certified herewith under a separate certificate.

At the October Term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court House in the City of Chicago, on the Fifth Day of October in the Year of our Lord One Thousand Nine Hundred and Thirty Seven, and of our Independence the One Hundred and Sixty-Seventh.

And afterwards on, to wit, the 24th day of November 1937, there was filed in the office of the Clerk of this Court a petition to intervene, which said petition to intervene is in the words and figures following:

In the United States Circuit Court of Appeals for the Seventh Circuit.

No. 6324. October Term, 1937

NATIONAL LABOR RELATIONS BOARD, PETITIONER
vs.

COLUMBIAN ENAMELING AND STAMPING COMPANY, INC., RESPONDENT

On Petition for Enforcement of Order of the National Labor Relations Board

Petition to intervene

Petition of Harry Hiatt, John H. Osborne, Edward J. George, Raymond Aleorn, John Whitlock, Clarence Baker, Employees of the respondent Columbian Enameling and Stamping Company, Inc., Respondent for leave to intervene.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Comes now Harry Hiatt, John H. Osborne, Edward J. George, Raymond Aleorn, John Whitlock, Clarence Baker, employees of the respondent Columbian Enameling & Stamping Company, Inc., in their own behalf and on behalf of all other employees of respondent similarly situated, who have signed a petition to so join, which is attached hereto, marked Exhibit "A" and made a part hereof, and petition the Honorable Court for leave to intervene in the above entitled proceeding, and in support of their petition state:

1. Your petitioners are production employees in the employ of the Columbian Enameling & Stamping Company, Inc., the respondent in the above entitled proceeding.

2. Your petitioners have an interest adverse to the interest of the petitioner in the said proceeding inasmuch as the continuation of their employment is threatened by the following Order of said petitioner which it has petitioned this Court to enforce to-wit:

ORDER

On the basis of the findings of fact and conclusion of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, the Columbian Enameling & Stamping Company, and its officers and agents, shall take the following action, which the Board finds will effectuate the policies of the Act.

1. Discharge from its employment all production employees who were not employed by it on July 22, 1935, and reinstate to the vacancies so created individuals who were so employed and have not since received substantially equivalent employment elsewhere and place the remainder of such individuals on a list to be called for reinstatement as and when their labor is needed.

2. Upon reinstating its employees as required in paragraph 1 of this order, shall cease and desist from refusing to bargain collectively with Enameling & Stamping Mill Employees Union, No. 19694, as the exclusive representative of the production employees employed by respondent in respect to rates of pay, wages, hours of employment and other conditions of employment.

3. File with the National Labor Relations Board on or before the thirtieth day from the date of service of this Order, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

Signed at Washington, D. C., this 14th day of February, 1936.

[SEAL]

J. WARREN MADDEN,

Chairman,

JOHN M. CARMODY,

Member,

EDWIN S. SMITH,

Member,

National Labor Relations Board.

3. Your petitioners were not employed by the said Columbian Enameling & Stamping Company, Inc., on July 22, 1935, but have become employees of said Company since that date and are now employees of said Company and are therefore subject to the terms of said Order above quoted, which Order requires said Company to discharge your petitioners from its employment, all to the great, immediate, and irreparable harm and injury to your petitioners.

4. Your petitioners, none of them or any of the employees of respondent who petition to join herein, have received any notice directed to them or any of them by the petitioner, National Labor

Relations Board at the time the hearing was held by said National Labor Relations Board in the City of Terre Haute, Indiana, on the 9th day of December, 1935, nor on the 14th day of February, 1936, or any time prior thereto, notifying them of any hearing before said National Labor Relations Board, the petitioner hereinbefore referred to, designating any time or place where said hearing would be held and by reason of lack of notice deprived of any right to appear at said hearing or to file a petition at said hearing to intervene at said proceeding, and that the denial now by this Court, of the right of these petitioners to intervene would be a denial of their right under the 14th amendment to the Constitution of the United States, in that they have a property right in the controversy and are entitled to the equal protection of the laws of the United States, and a denial of the right to intervene would be to deprive them of their property without due process of law, and to deny them the equal protection of the law as is guaranteed under Section 1 of the 14th amendment to the Constitution of the United States.

5. These petitioners further aver that none of said petitioners have ever received any notice of the pendency of this action since they became employed by the respondent Columbian Enameling & Stamping Company, Inc., and failure to permit these petitioners to intervene would be to deny them of their right to assert their interest in the controversy without due process of law and to deny them the equal protection of the laws as is guaranteed under Section 1 of the 14th amendment to the Constitution of the United States of America.

6. These petitioners further aver that the following employees to-wit: Homer Arney, James Cooper, Clyde McConkey, Harry Coker, J. T. Crume, William Hamilton, William Lamb, Hubert Cooman, Kathleen Campbell, Jack Payne, Claude Burke, Warren Chickadaunce, Lillian Humphrey, Arthur Taylor, R. G. Wood, M. J. Brown, Paul LeComte, Clifford Miley, E. E. Fried, Donald Woodruff, W. W. Ferguson, R. H. Malone, Bert White, E. C. Myles, H. M. Benton, H. L. Boyd, Fred Doss, V. M. Kester, H. T. Scott, Bert Boyle, E. G. Welch, C. L. Gordon, C. B. Wright, F. D. Pugh, H. Rickelman, J. R. Sturgell, L. E. Collins, M. F. Hajdu, Harry Hart, Homer Crady, Leon Blakely, Harold Chamberlain, Ray Chamberlain, H. D. Coleman, W. V. Lindholm, Dale Myers, M. T. Petzold, H. H. Higginbotham, Russel Minger, Louis Burgess, John Tanner, Herman Redman, Leroy Nevins, G. P. Schell, Bert Roberts, S. S. Milkin, Martin Thompson, Ralph Hodges, C. A. Arnold, Helen Anderson Fried, B. M. Geiselman, R. C. Fox, Roy Perkins, G. R. Cross, Hermine Fields, C. C. Adkins, E. B. Sharpe, Homer Gray, M. Sexton, J. W. Cooper, G. A. Mitchell, Fred Smith, H. J. Myers, Kenneth Meneely, C. E. Ellenberger, H. E. Day, D. C. Pickett, and M. F. Canap, have become employees of the respondent Columbian Enameling & Stamping Company, Inc., since the entering of said Order by the petitioner, National Labor Relations Board on the 16th

day of February, 1936, and this is the first opportunity that these petitioners have had to file this petition to intervene in this cause, and they have just learned of the pendency of said cause of action, in that on the 14th day of February 1936, they were not then and there employees of the respondent, Columbian Enameling & Stamping Company, Inc.

2. That these petitioners and all other employees of respondent similarly situated except those persons mentioned in paragraph identified 6 above, were in the employ of the respondent Columbian Enameling Company, Inc., from and on the 9th day of December 1935, and to the 14th day of February 1936, as aforesaid.

3. That these petitioners and the other employees of the respondent Columbian Enameling & Stamping Company, who are similarly situated to these petitioners and similarly employed thereby, and who have joined in this petition, are separate and several residents and citizens of the State of Indiana, and United States of America, and as such residents and citizens are entitled to the equal protection of the laws as is guaranteed them under Section 1, Article 14 of the amendments to the Constitution of the United States.

4. That the enforcement by this Honorable Court in the above named proceeding of the Order hereinbefore set out and hereinbefore referred to as aforesaid, will finally adjudicate and prejudice the interests of your petitioners in their employment by the respondent company, and they have no other remedy than that remedy which they may obtain through intervention in said proceedings for the purpose of protecting their said interest.

Therefore, your petitioners pray that this Honorable Court shall grant them leave to intervene in said proceedings to the end that your petitioners may protect their interest in their employment.

RAYMOND ALCORN,
JOHN WHITLOCK,
HARRY HIATT,
EDWARD J. GEORGE,
CLARENCE BAKER,
JOHN H. OSBORN.

PATRICK R. SHAFER.

801-802 Sycamore Bldg., Terre Haute, Indiana.
Attorney for Petitioners.

STATE OF INDIANA,

County of Vigo, ss:

Before me, the undersigned Notary Public, in and for said County of Vigo and State of Indiana, personally appeared Harry Hiatt, John H. Osborne, Edward J. George, Raymond Alcorn, John Whitlock and Clarence Baker, who being duly sworn according to law, depose and say that they are the petitioners who signed their names to the foregoing petition and that said petition was signed by them.

for themselves and on behalf of 203 other employees of the respondent, Columbian Enameling & Stamping Company, who are similarly situated and similarly employed, and that the averments of fact set forth and contained in the foregoing petition are true and correct.

RAYMOND ALORN,
JOHN WHITLOCK,
HARRY HATT,
EDWARD J. GEORGE,
CLARENCE BAKER,
JOHN H. OSBORNE

PAUL R. SHAFFER.

*801-802 Sycamore Bldg., Terre Haute, Indiana.
Attorney for Petitioners.*

Subscribed and sworn to before me, the undersigned Notary Public, this 18th day of November 1937.

MARY MURKIN,
Notary Public

My commission expires June 8, 1940.

Joiner in petition

We, the undersigned, being employees of Columbian Enameling & Stamping Company, Inc., the respondent in the above entitled proceedings hereby state and declare that our situation is similar to that of the Petitioners in the foregoing petition, in that we have become employees of the respondent Company since July 22, 1935, and our employment is therefore, seriously affected and threatened by the order of the National Labor Relations Board, sought to be enforced herein, which order is as follows:

On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, the Columbian Enameling & Stamping Company, and its officers and agents, shall take the following action, which the Board finds will effectuate the policies of the Act:

1. Discharge from its employment all production employees who were not employed by it on July 22, 1935, and reinstate to the same categories so created individuals who were so employed and who have since received substantially equivalent employment elsewhere and place the remainder of such individuals on a list to be called in for reinstatement as and when their labor is needed.

2. Upon reinstating its employees as required in paragraph 1 of this order, shall cease and desist from refusing to bargain collectively as the Columbian Enameling & Stamping Mill Employees Union, No. 19694 is the exclusive representative of the production employees employed by the respondent in respect to rates of pay, wages, hours of employment and other conditions of employment.

3. File with the National Labor Relations Board on or before the sixteenth day from the date of service of this Order, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

And we desire to join and do hereby join the Petitioners in their verments and prayers of their petition.

John H. Osborne, Dorval D. Bailey, F. W. Murphy, J. S. McCrory, A. J. Hogar, H. C. Scott, B. F. Paver, L. E. Scott, L. T. Brady, R. L. Jenks, E. G. Hoare, H. B. Sparks, Earl Walker, Stanley H. Jones, William Hamilton, LeRoy F. Andrews, E. W. Jones, S. S. Mullikin, L. Burgett, H. L. Coker, W. O. McBeth, A. A. Bennels, A. W. DePlanty, C. S. Miley, L. A. Newell, A. R. Stevens, L. V. Newell, N. V. Jones, O. A. Geckler, James P. Boone, T. Tanner, J. E. Tovey, H. D. Skidmore, C. H. Edward, Gordon Jackson, Roy Myers, Paul E. Wilbur, Chester L. Gordon, Joe Barnett, Clay Johnson, H. Chamberlain, W. W. Jones, A. L. Daniels, R. H. Thornton, Everett W. Creasey, Homer Gray, Mervin W. Padgett, Francis J. Wilson, Ray Chamness, Jack Payne, Warren P. Chicadance, Harold Maloney, Joseph C. Smith, C. J. Herter, LeRoy Nevins, Harrel J. Rickelman, Leon R. Blakely, Martin W. Thompson, H. M. Hussian, H. L. Titus, Kenneth H. Smith, Chester Nelson, James F. Leek, William H. Lamb, R. G. Williams, M. F. Hajdu, J. A. Coffman, C. A. Arnold, H. E. Grady, H. R. Arney, Dave Andrews, F. J. Smith, M. E. Brown, Harold J. Myers, W. W. Ferguson, William Muffett, Joseph Sturgell, W. A. Casel, F. M. Camp, Dale Myers, Claude Burke, Millard E. Saxton, John T. Crum, Clyde W. McConkey, H. E. Higginbotham, Ben Butler, Fred Doss, H. E. McFadden, R. H. Malone, H. O. Coleman, James W. Cooper, Paul V. Weeks, Herman C. Redmon, Herman Gorman, Loren Ring, George A. Mitchell, Vaughn Kester, John D. Miller, Donald Woodruff, Charles E. Ellinger, Helen Lawson, Guy Nicles, Robert C. Fox, Rose Dragon, Helen Gaipo, William V. Lindholm, Agnes M. Cord, S. E. Trager, H. D. Kuhn, Gilbert H. Sexton, Estel Dalgarn, Raymond R. Denney, Harold E. Day, Larry Neale, Eva Smith, C. P. Shell, Roy Perkins, Glenn Cramer, Dottie Jones, John Urien, Chas. T. Keller, John Oiwell, H. P. Came, J. R. McClean, Robert W. Belt, Walter Hill, G. F. Rice, Carl L. Belt, Henry Stott, Roger A. Winters, Bert A. Roberts, F. D. Youngen, Earl Bridgewater, Marval H. Nickles, Lyle E. Collens, C. W. Swiger, Charles L. Spore, Butis M. Gusilman, Ogle Starkey, Eugene

Myers, Cala V. Swens, C. B. Baker, Kennard Den
 Orville Smith, Don C. Maloney, Wayne Car
 Robert Bates, Robert A. Pinson, Rosemary Pattis
 Martha Jane Bates, Lois Kuhn, Edwin M. Robe
 Ray Howard, Russell C. Minger, Helen Fried, Pe
 Gentry, Elizabeth Murray, H. G. Bailey, Walter
 Shepard, K. W. Bragg, Dorris Miller, Jewell Boyl
 Irene Kosco, Raymond Wood, Elizabeth Lew
 Frank Cotton, Herbert T. Scott, M. S. Petzold, Han
 Hiatt, Henry M. Benton, Roy E. Fulmer, Lawren
 G. Stevenson, Arthur L. Taylor, Floyd Pugh, Pe
 LeComte, Byron O. Greenwood, Burlen Boyle, Ka
 neth L. Meneely, H. I. Thornton, Donn C. Piec
 John Whitlock, Louis Marter, E. J. George, Way
 Toling, David Service, Ralph Hodges, Justus
 Hall, Hermine Fields, Eddie B. Sharpe, Charles
 Allenbaugh, Martha Snow, Ollie B. Allenbaugh,
 Margaret Kennedy, John G. Bacon, Kathleen Cam
 bell, Maxine Abram, C. B. Wright, C. A. Smith,
 White, G. A. Gardner, E. G. Welch, T. C. Simps
 Carol E. Starkey.

[Endorsed:] Filed Nov. 24, 1937. Frederick G. Campbell, Clerk
 And afterwards on, to wit, the 3rd day of December 1937, the fol
 lowing further proceedings were had and entered of record:

Friday, December 3, 1937

Court met pursuant to adjournment before Hon. Evan A. Evans
 Circuit Judge.

6324

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

COLUMBIAN ENAMELING & STAMPING CO., INC., RESPONDENT

Petition for Enforcement of Order of the National Labor Relations Board

It is now here ordered that the petition of Harry Hiatt, et al.,
 leave to intervene in this cause be and the same is hereby granted
 and the said Harry Hiatt et al. are hereby granted leave to inter
 vene.

And afterwards on, to wit, the 18th day of December 1937, the
 was filed in the office of the Clerk of this Court an answer of
 interveners Harry Hiatt et al. to the petition of the National La
 bors Relations Board for enforcement of their order, which said ans
 is in the words and figures following:

In the United States Circuit Court of Appeals for the Seventh
Circuit

Cause No. 6324. October Term, 1937

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

COLUMBIAN ENAMELING AND STAMPING COMPANY, INC., RESPONDENT,
HARRY HIATT, JOHN H. OSBORNE, EDWARD J. GEORGE, RAYMOND
ALCORN, JOHN WHITLOCK, CLARENCE BAKER, EMPLOYEES OF COLUM-
BIAN ENAMELING AND STAMPING COMPANY, INC., RESPONDENT,
INTERVENERS

*Petition of the interveners, Harry Hiatt, John H. Osborne, Edward J.
George, Raymond Alcorn, John Whitlock, Clarence Baker, on
behalf of themselves and others similarly situated to the petition
of the National Labor Relations Board for the enforcement of their
order*

To the Honorable Judges of the United States Circuit Court of Ap-
peals for the Seventh Circuit:

Comes now Harry Hiatt, John H. Osborne, Edward J. George,
Raymond Alcorn, John Whitlock, and Clarence Baker, employees of
Columbian Enameling And Stamping Company, Inc., permitted to
intervene by this Court, and for and on behalf of himself and them-
selves and other employees of the Columbian Enameling And Stamping
Company, Inc., similarly situated, the interveners, by their at-
torney, Paul R. Shafer, and for answer to the petition of the Na-
tional Labor Relations Board for enforcement of an Order of said
Board respectfully show and allege:

1. The Order of the petitioner, National Labor Relations Board,
dated February 14, 1936, which the petitioner is asking this Hon-
orable Court to enforce as it affects the interveners herein was and is
unlawful, void and of no effect for the following reasons,
among other, to-wit:

(a) The petitioner had no jurisdiction over the interveners in the
meetings in which said Order was made.

(b) Petitioner had no jurisdiction over the employment status of
the interveners in the proceedings in which said Order was made.

(c) Said Order was made without any notice to the interveners
and deprives them of their property without due process of
law.

(d) Said Order was made without any hearing as to the rights of
the interveners and deprives them of their property without due
process of law.

(e) The persons designated as Members of Columbian Enameling
And Stamping Company, Inc., Union No. 19694, were not then and
are employees of the respondent, Columbian Enameling And

Stamping Company, Inc., on the 22nd day of July 1935, on the 6th day of December 1935, nor on the 14th day of February 1936.

2. The petitioner herein, the National Labor Relations Board, does not have authority to order the employer of the interveners herein to discharge said interveners from its employ by reason of lack of notice, hearing and for the further reason that no dispute has arisen between the employer and these interveners or any violation of the Wagner Act has taken place.

3. The petitioner, the National Labor Relations Board has without any justification whatsoever, arbitrarily selected the date prior to any alleged violation of the Wagner Act by the employer of the interveners as the date determinative of the rights of the interveners, many of whom were employed by the aforesaid Columbian Enameling And Stamping Company, Inc., on or prior to the date of any alleged violation of the Wagner Act as found by the petitioner.

4. The enforcement of said Order of the National Labor Relations Board did impose upon the interveners severe and unconscionable hardships for the benefits of persons who were in no way injured by said interveners who voluntarily elected to remain idle when they could have accepted employment with the aforesaid respondent as did the aforesaid interveners.

5. That the interveners herein, or a great number of them were in the employ of the respondent, Columbian Enameling And Stamping Company, Inc., on the 6th day of December 1935, and had been for many weeks immediately prior thereto, and there was and is no disagreement between the interveners and the respondent, when said hearing was had by said National Labor Relations Board, nor was there any violation of the Wagner Act by the employer of the interveners herein at any of said times aforesaid.

6. The Order so made by the petitioner, under date of February 14, 1936, is void as it deprives the interveners herein, who are citizens of the United States, of their property without due process of law and the equal protection of law as guaranteed under the Fifth Amendment, Section 1, to the Constitution of the United States.

WHEREFORE, the interveners pray that this Honorable Court shall make and enter a Decree, setting aside the Order of the National Labor Relations Board as it affects said interveners and other just and proper relief.

Dated at Terre Haute, Indiana, this 17th day of December 1937.

PATRICK R. SHAFER,
Attorney for Intervenors.

STATE OF INDIANA,

County of Vigo, ss:

Before me, the undersigned authority, a Notary Public in a for said County and State, personally appeared Harry Hiatt, who being duly sworn according to law, deposes and says that he is one of the interveners named in the foregoing Answer and that the averments of fact in said Answer are true and correct.

HARRY HIATT

Subscribed and sworn to by Harry Hiatt, before me, the under-signed Notary Public, this 17th day of December, 1937.

PAUL R. SHAFER,
Notary Public.

My commission expires December 30, 1939.

[Endorsed:] Filed Dec. 18, 1937. Frederick G. Campbell, Clerk.
And afterwards on, to wit, the 23rd day of February 1928, the following further proceedings were had and entered of record:

Wednesday, February 23, 1938

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge, Hon. William M. Sparks, Circuit Judge, Hon. Walter E. Treanor, Circuit Judge.

6324

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

COLUMBIAN ENAMELING & STAMPING CO., INC., RESPONDENT

Petition for Enforcement of Order of the National Labor Relations Board

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Robert B. Watts, counsel for petitioner, by Mr. Earl F. Reed, counsel for respondent, and by Mr. Paul R. Shafer, counsel for interveners Harry Hiatt, et al., and the Court having heard the same takes this matter under advisement.

And afterwards on, to wit, the 28th day of April 1938, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following:

In the United States Circuit Court of Appeals for the Seventh Circuit

No. 6324. October Term, 1937, April Session, 1938

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

COLUMBIAN ENAMELING AND STAMPING COMPANY, INC., RESPONDENT
Petition for Enforcement of Order of the National Labor Relations Board

April 28, 1938

Before EVANS, SPARKS, and TREANOR, Circuit Judges.

EVANS, Circuit Judge. Petitioner seeks the enforcement of an order of the National Labor Relations Board directing the respondent

company to reinstate employees, who had theretofore gone on a strike and had been replaced by other employees. The order¹ of the Board was predicated on a finding that the company had been guilty of unfair labor practices; namely, refusal to bargain with the union which represented a majority of its employees.

The employees who had been hired to replace the strikers have intervened and appear separately.

The conflict between the company and the union has been protracted and bitter. It covers several issues. We find it necessary to state the facts somewhat in detail to give a thorough understanding of the case.

The Facts: The Columbian Enameling and Stamping Company, an Indiana corporation, located at Terre Haute, Indiana, manufactures and sells enamelware. It employed about 600 persons, 500 of whom were production and maintenance employees who were eligible to membership in the Enameling and Stamping Mill Employees Union, No. 19694. About 485 of the 500 eligible employees belonged to the union. The strike occurred March 22, 1935; the National Labor Relations Act became effective July 5, 1935; and the specific day on which the company is alleged to have refused to bargain is July 23, 1935. The labor agreement between respondent and its employees ran for a year and expired July 14, 1935. Because of the importance of the chronological presentation of the successive steps in this conflict, we set them forth in detail.²

¹ "On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, the Columbian Enameling & Stamping Company, and its officers and agents, shall take the following action, which the Board finds will effectuate the policies of the Act:

"1. Discharge from its employment all production employees who were not employed by it on July 22, 1935, and reinstate to the vacancies so created individuals who were so employed and have not since received substantially equivalent employment elsewhere and place the remainder of such individuals on a list to be called for reinstatement and when their labor is needed.

"2. Upon reinstating its employees as required in paragraph 1 of this order, shall cease and desist from refusing to bargain collectively with Enameling & Stamping Mill Employees Union No. 19694 as the exclusive representative of the production employees employed by respondent in respect to rates of pay, wages, hours of employment, and other conditions of employment.

"3. File with the National Labor Relations Board on or before the thirtieth day from the date of service of this Order, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements."

July 14, 1934	Company and Union contracted to arbitrate, for one year, future differences; Company at first refused to contract but Fed. labor offices effected agreement.
July 14, 1934	Union 19694 formed (A. F. of L. affiliate). By September, 1934, 450 of 500 production employees were members.
Aug. 8, 1934	Union Scale Com. requested Co. to institute "check-off" system.
Oct. 4, 1934	Company started sending circular letters to all employees setting forth its position re conflict.
Oct. 4, 1934	Company notified it would not use "check-off" system because it believed it to be illegal unless new assignments of pay were made every 30 days.
Oct. 30, 1934	Company notified union it would negotiate. Nov. 23 (postponed to Nov. 26).
Nov. 26, 1934	Mr. Taylor (Fed. Labor man) and Scale Com. met with Company and asked for closed shop. Company's representative refused; asked for 20% increase in pay, but company said conditions did not warrant it.
Jan. 4, 1935	Scale Com. presented demands to Company: (1) that Company agree to lay off any member suspended by union. Company refused; (2) asked for closed shop.
Feb. 5, 1935	Union asked for arbitration on these subjects.
Feb. 7, 1935	Meeting between company and union.
Feb. 8, 1935	Company sent letter to union, employees, etc., stating proposals of Jan. 4 not within purview of arbitration agreement.

The issues of law are:

(1) The constitutionality of the National Labor Relations Act (2 U.S.C.A. sec. 151, et seq.²).

- Feb. 9, 1935 Union wrote Company not to send out circular letters because they did not want other nonmembers and foremen to know of their affairs, and asked that company deal with scale committee.
- Feb. 19, 1935 Company circular letter to employees and union, citing Sec. 7 (a) of N.L.R.A.
- Mar. 5, 1935 Meeting between Company and Union.
- Mar. 5, 1935 Company told Scale Com., it would show it all circular letters first and let it state objections thereto.
- Mar. 11, 1935 Scale Com., Company and Mr. Taylor met to discuss Jan. 4 proposals.
- Mar. 17, 1935 Union sent Company a letter containing resolutions—recited Company's failure to agree to arbitrate its proposals; said they would not work with anyone who could have joined union and did not.
- Mar. 19, 1935 485 production employees were members of union.
- Mar. 22, 1935 Union moved to call strike and all members of union struck.
- Mar. 22, 1935 Since this time, majority of units of employees have designated union as collective bargaining agent.
- Mar. 23-July 23, 1935, the Company's plant was closed. Picketing since March 23, except during time of martial law. Sometimes 50 pickets. Sometimes unruly crowds who caused much destruction.
- Mar. 23, 1935 Conciliator from Dept. of Labor tried to settle strike. He stated all union wanted was closed shop and company refused and conciliator quit.
- Mar. 30, 1935 Company announced building closed indefinitely.
- May 10, 1935 Mayor of Terre Haute requested conference between the company and union. Company refused stating uselessness of meeting because it would not have closed shop.
- May 20, 1935 After May 20 the Company foreman solicited individuals to return to work and many did.
- June 7, 1935 Company advertised in Terre Haute newspaper saying it was willing to open and operate "without union recognition or agreement" taking back union and non-union men indiscriminately.
- June 7, 1935 Scale Committee asked meeting.
- June 11, 1935 Conference between representatives of both sides.
- July 5, 1935 National Labor Relations Act became effective.
- July 19, 1935 Company made plans to reopen shop and union interfered; 40 men accompanied into plant by police.
- July 20, 1935 General labor strike called in protest of use of police and included all Terre Haute; terminated next day. On July 22, there were 15,000 persons around plant and missiles were thrown; militia called and martial law proclaimed and picketing forbidden.
- July 23, 1935 Company reopened plant and filled positions, some old union employees and some new men. By Aug. 19, 190 old employees returned. By Sept. 1935 company had full force.
- July 23, 1935 Two Department of Labor conciliators conferred with Company and they agreed to confer with union, and several days later company changed mind, and refused to confer further.
- Aug. 4, 1935 Picketing resumed.
- Sept. 20, 1935 Company refused to bargain collectively with union. Company did not answer letters of Union asking for conference. (Same occurrence as on Sept. 20, *supra*.)
- Oct. 28, 1935 A union official asked company to take back striking employees but company refused and told official they could sign application for employment.
- Nov. 31, 1935 Union filed with regional director a complaint that the company was engaging in unfair labor practices forbidden by the N.L.R.A.
- Dec. 21, 1935 Board issued complaint against Company for unfair acts under Sec. 8 (1) and (5) and Sec. 2 (6) and (7).
- Dec. 2, 1935 Company filed answer alleging: (a) Act was unconstitutional; (b) Company was not engaged in interstate commerce; (c) Allegations do not constitute charge of unfair labor practices; (d) In July and August, Company gave opportunity to striking employees to return and many did; (e) Union made demands contrary to labor agreement such as for closed shop and demanded arbitration of it although not in agreement.
- Jan. 9, 1936 Trial begun before labor board examined and closed December 11, 1935.
- Jan. 16, 1935 Board ordered proceeding transferred before it for determination.
- Jan. 14, 1936 Order of Board for reinstatement.
- Jan. 9, 1937 Board filed petition with this court for enforcement of its order.

Labor Contract of Columbian Enameling & Sampling Company, Inc. and Its Employees.
"At a meeting held in the offices of the Indianapolis Regional Labor Board on July 14, 1934, presided over by Dr. Earl R. Beckner, Chairman, the above parties agreed to the following contract:

"(1) Seniority rights shall prevail throughout the plant. In the event that it becomes necessary to reduce the force of employees, the last employee entered upon the Company's payroll shall be the first employee to be furloughed. No new employee shall be employed until all furloughed employees have been returned to work in the recalling of furloughed employees for duty, the oldest employee in point of

(2) Whether there is evidence to support the Board's finding of unfair labor practices, and if so whether interstate commerce, found to exist, is thereby burdened.

(3) Whether the Board's order is valid. If so, whether it can be enforced to the detriment of the intervenors, present employees.

service shall be the first employee to be returned to duty. The seniority rule shall apply on the basis of departments within the plant.

(2) Employees of either sex will be promoted upon the basis of competency. Management shall have the right to determine competency.

(3) No employees have been or will be discriminated against because of his membership in or non-membership in, affiliation with or non-affiliation with any labor organization.

(4) A rest-period shall be granted to all female laborers of ten minutes for four hours of labor performed. This is to apply to all other departments where rest-period is now practiced.

(5) When either party to this agreement desires to terminate or modify this agreement, he shall give written notice to the other party at least thirty days in advance of such termination.

(6) In the event that it becomes necessary to reduce the amount of employees given, management agrees to spread the available work among all the employees. Management reserves the right to determine at what point it becomes necessary to lay off employees rather than spread the work.

(7) Any employee dismissed from the service of the Company shall be given a hearing within three days from date of dismissal, hearing to be conducted by representatives of the employee and the management. Should it be determined that the employee involved has been unjustly dismissed, such employee shall be restored to duty and paid for time lost.

(8) Management will endeavor to provide proper ventilation in the factory.

(9) A committee representing employees in the various departments shall be privileged to take up any grievance that may arise in their respective departments with the foreman in charge of said department. Failing to adjust such grievance, committee shall be permitted to refer the matter to the Department Superintendent from him if necessary to the Plant Superintendent and finally to the General Manager of the Company.

In any case in which a satisfactory settlement of a dispute arising under this contract cannot be reached, such dispute shall be referred to a committee of arbitration composed of two persons selected by the Management, two persons selected by the Union, and fifth person to be selected by these four, who shall reach a decision which shall be final and binding upon both parties to this contract. There shall be no change of work by either party to this contract, pending decision by the Committee of Arbitration.

(11) Wherever possible the management shall limit the hours of work to eight per day.

In drafting the contract which was signed on July 14th, 1934, by the representatives of the company and of its employees one clause which had been agreed to inadvertently omitted. The clause follows:

(12) This contract shall run for a period of one year from date that is July 14, 1935.

It is agreed by the parties to the contract as originally drafted and signed on July 14, 1934, that the above clause be and hereby is made a part of the contract and is to be appended thereto. *

² These provisions read as follows:

(29 U. S. C. A. Sec. 158) "SEC. 8. It shall be an unfair labor practice for an employer—

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7. * * *

"(2) To refuse to bargain collectively with the representatives of his employees subject to the provisions of section 9 (a);"

(29 U. S. C. A. Sec. 157) Section 7 provides:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or mutual aid or protection."

(29 U. S. C. A. Sec. 159) Section 9 (a) provides:

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer."

(29 U. S. C. A. Sec. 152) "(3) The term 'employees' * * * shall include individual whose work has ceased as a consequence of, or in connection with, an acute labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment." * * *

CONTENTIONS AND COUNTER-CONTENTIONS

RESPONDENT'S CONTENTIONS

PETITIONER'S CONTENTIONS

2. Interstate commerce is not involved because both raw materials and finished products remain at rest in the Company's place for several months before and after interstate shipment and therefore the continuity in interstate commerce shipment is broken.

3. Further conferences would have been useless because all that union was demanding was "a closed shop, and company would not so operate.

4. The Act was passed after the strike and therefore is inapplicable; furthermore, the strike was an illegal one because there was an arbitration agreement, and being an illegal strike the relationship of employer and employee had been terminated. The arbitration contract provided that there should be no strikes.

1. The Act is unconstitutional.

1. The Act has been held constitutional (*Nat. Labor Relations Bd. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, and other cases).

2. Majority of raw material used in the manufacture comes from 20 states; and 85% of manufactured products is shipped to 47 states; three interstate railroads and eight interstate truckers are used.

3. Union was demanding other things than closed shop, such as 2 hour pay when machinery broke down. Union was asking for the conferences, which was indicative of fact that they were in conciliatory mood.

4. The Act is applicable, and need not be retroactively construed to be here applicable because the refusal to meet and confer occurred on July 22 and thereafter, after the passage of the Act, and the company had refused to arbitrate, and the arbitration agreement only provided that there should be no strike while a matter was pending before the Committee of Arbitration. A strike does not terminate the employer-employee relationship (Citing the Michaelson case, 291 F. 940). The Nat. Labor Act has been held applicable in two cases where the strike occurred prior to its passage. *Jeffery-Dewitt Co.*, 91 F. (2d) 139, cer. denied, Oct. 18; *Carlisle Lumber Co.* case (UCA 9), now pending on application for certiorari in Supreme Court, filed Mar. 30.

Subsequent to the argument of this case the Supreme Court announced decisions in the following cases⁴ which have narrowed the issues through the final determination of what previously were controverted legal questions.

It may be and is assumed for the purposes of this case that the National Labor Relations Act is an authorized exercise of power by Congress and is valid, and that one out on strike does not thereby ordinarily interrupt the employer-employee relation previously existing. In other words, the status of the employee, as such, is not broken by the strike. (Some of the authorities so holding, including those of this court, are collected in the margin.⁵)

We accept without discussion, as it seems clear under the recent decisions of the Supreme Court, petitioner's view that respondent is engaged in interstate commerce.⁶

It may also be assumed that ordinarily the status of employer-employee exists although the strike occurred before the passage of the National Labor Relations Act and continued after its passage.

These conclusions, however, do not meet or solve our question. We have a case where the parties (the employer and employees) bound themselves by a written agreement on the subject:

"In any case in which a satisfactory settlement of a dispute arising under this contract cannot be reached, such dispute shall be referred to a committee of arbitration composed of two persons selected by the Management, two persons selected by the Union, and fifth person to be selected by these four, who shall reach a decision which shall be final and binding upon both parties to this contract. There shall be no stoppage of work by either party to this contract, pending decision by the Committee of Arbitration."

It is in view of this agreement of the parties that our question arises.

What is the status of a group of employees who in the face of such a definite agreement left their employment? Is the doctrine of estoppel not applicable to parties to such an agreement? Is the maxim of equity that one who comes into a court of equity must come with clean hands, not applicable?

No foundation more secure and reassuring or more protective of the rights of both labor and capital can be found than that reasonable contracts, not violative of public policy, should be respected by the parties who pledged their words and their integrity to abide by their terms. We grope only in darkness and trek further into the wilderness of confusion and lost landmarks if we lose sight of this

⁴ National Labor Relations Board v. Penn. Greyhound Lines, Inc., decided February 28, 1938; National Labor Relations Board v. Pacific Greyhound Lines, Inc., decided February 28, 1938; Lauf v. Shinner & Co., decided February 28, 1938; and Santa Cruz Fruit Pkg. Co. v. National Labor Relations Board, decided March 28, 1938.

⁵ Michaelson v. United States, 291 U. S. 940 (reversed on other grounds in 266 U. S. 421); Iron Moulders Union v. Allis-Chalmers Co., 166 F. 45; Tri-City Trades Council v. American Steel Foundries, 238 F. 728; Nat. Labor Relations Board v. Carlisle Lumber Co., decided Dec. 15, 1937, C. C. A. 9; Jeffery Insulator Co. v. National Labor Relations Board, 31 F. (2d) 134.

⁶ Electric Bond & Share Co. v. Securities and Exchange Commission, decided March 28, 1938; Santa Cruz Fruit Pkg. Co. v. National Labor Relations Board, decided March 28, 1938; National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1.

beacon light. Progress lies only in respect for one's agreement. Respect for and support of the cause of labor follows labor's respect for its contract. The same Bill of Rights which through one section gives just protection to labor, through another section protects the just rights of others. Overriding one will result in the overthrow of the entire Bill of Rights.

In applying these observations to the instant case it is important to keep in mind the limitations which we have imposed. Only reasonable agreements are specified. Not violative of any rule of statute or public policy is another necessity. These are all important limitations to be observed and for several good reasons.

We are not blind to the fact that the purpose of governmental activity in labor matters is to treat all as nearly equally as is possible under existing conditions; that in dealings between employer and employee the former may hold the whip hand to the great disadvantage of the latter when the employees are numerous and unable to act collectively; hence collective bargaining is authorized. Nor can we fail to observe that where large groups, veritable armies in size, are collectively acting, there is possible danger lurking in the result of mass drives. Intolerance of the rights of others may result.

As so often occurs, parties deeply interested, and prejudiced by their interests, and seeing red, suffer from the delusion that numerical strength measures right; that so many, sincerely convinced of the merits of their cause, cannot be wrong. Alas, such an attitude is but another phase of the erroneous philosophy that might makes right. As the major premise of any syllogism, it leads only to erroneous conclusions and catastrophic results.

When the state or nation speaks through legislation which the Supreme Court approves as valid, we must accept it as an expression of public policy which we are to enforce willingly and in the spirit of its enactment. The National Labor Relations Act is such legislation. It was enacted after the strikers had withdrawn their services. In other words, at the time they went on strike there was in force no National Labor Relations Act and the employees acted in the face of their agreement—"There shall be no stoppage of work by either party to this contract, pending decision by the Committee of Arbitration."

In the face of such an agreement, were they strikers, that is, was there an employer-employee relationship existing, when they quit work? Did the status of employer-employee continue as to them after they quit?

We must answer this question in the negative. They are estopped to say that their violation of their specific agreement not to strike may be by them ignored and repudiated. Moreover, they have no standing in a court of equity to ask relief in the face of a solemn agreement which was reasonable, and which they deliberately breached.

The agreement which they had entered into ran for a single year. In three months more, it would have ended. Not only did the employees agree not to strike during the year, but they agreed to submit their differences to arbitration. Such an agreement was promotive of the best interests of both parties. Surely no reasonable person could say it was unreasonable or unfair or indicative of distress. Surely, in the solution of the perplexing and troublesome questions arising out of the attempted settlement of labor disputes the parties can adopt no principle as the basis of negotiations of subsequent conduct, more sound, safe, and sane than that the agreements, understanding made by authorized representatives, are reasonable in the period of their application, must be respected.

This conclusion does not mean that we approve or uphold the refusal of the respondent to meet the request of the conciliators and enter into negotiations looking toward the settlement of disputes after the employees had quit their employment. Respondent's employees were largely unionized. Under the Act, respondent, who requested to negotiate, was in duty bound to do so. National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 11. Instead it lent a friendly ear to unwise counsel wholly out of sympathy with the legislation designed to avoid and settle capital-labor disputes. It erred in its refusal to respect the law and ignore the request of those charged with the burdensome task of working a peaceful solution of what had become a bitter controversy. There is little or no explanation which we can find for their refusal, save an open defiant, douting of the law of the land.

It must be freely conceded that labor has the right to quit the job. It had prior to the enactment of the National Labor Relations Act the right to strike. That statement of the law in the abstract is elementary. It has however, a few limitations. One of them is when labor has expressly agreed for a limited time not to strike but to submit disputes to arbitration.

When, before the passage of the National Labor Relations Act, labor quit unemployment in the face of such a specific agreement, reasonable in time and in conditions and not violative of statute law nor of public policy, then labor estopped itself to call the termination of its employment, a strike. More, it had no standing in a court of equity to enforce rights growing out of its employment relationship which it thus repudiated through termination of its contract. To that extent the right to strike is limited. For if a right is unenforceable or nonrecognizable, it can hardly be called a right.

There are two propositions which the employers of labor and employees must recognize and respect:

(a) The National Labor Relations Act is valid and ~~unconstitutional~~ a part of the laws of the land. Its provisions apply to all employers who are engaged in interstate commerce.

(b) Reasonable contracts of labor employment, not violative of any statute or public policy, which deal with compensation and working conditions must be respected by all employers entering into such agreements.

Courts have the plain duty of sternly enforcing both these legal impositions. In no other way can the public welfare be promoted and the rights of both labor and capital be protected.

In disposing of this case we are confronted by a single question. The National Labor Relations Board held that the former employees of respondent, who went on a strike before the enactment of the Act in violation of their reasonable agreement not to strike, so to submit their differences to arbitration, were entitled to invoke the aid of a court of equity to secure reinstatement of the contract they voluntarily terminated. In so holding petitioner erred.

The holding in this case is, of course, restricted to the particular facts in this case which are:

(a) The withdrawal of the employees before the National Labor Act was enacted.

(b) The employees had a valid short time wage agreement during which they agreed not to strike but to submit differences to arbitration.

(c) The employees ceased working in the face of their wage agreement with its anti-strike provision and at a time when there was no National Labor Act in force.

It is needless to add that we are not required to pass upon, nor do we pass upon a case where any one or all of said relevant factors are absent.

It follows that the petitioner's petition for the order of enforcement sought must be denied and it is denied.

Sixth Circuit Judge. I concur in the conclusion.

Seventh Circuit Judge, dissenting. If I correctly understand the opinion and decision of the majority, it rests upon the assumption that the employees of respondent company could not invoke the assistance of the National Labor Relations Board because the aforementioned employees had gone on a strike in violation of an agreement between the employees and respondent company.

It is clear from the chronological presentation of the successive events in the controversy between the employees and respondent company that a labor dispute existed between the employees and their employer, and that as a result of this dispute the employees struck, claiming that the employees, in view of an existing contract, were being unjustifiably demands upon the employer, the fact remains that there was a labor dispute; also, the fact was that the employer refused to submit to arbitration the questions raised by the employees' demands. It may be that the employer was correct in claiming that

the demands covered matters which were not included in the existing arbitration agreement between the employer and employees. But at any rate no committee of arbitration was appointed prior to the strike, and the clause of the agreement, which it is assumed that the employees violated by striking, provides that "there shall be no stoppage of work by either party to this contract, pending decision of the Committee of Arbitration."

The question for this Court to decide is whether the order of the National Labor Relations Board was within its statutory authority under the National Labor Relations Act. The conduct of respondent's employees was a fact for the Board to consider in determining the ultimate fact of unfair labor practice by the employer; but in our opinion our decision in the cause presented by the petition of the Board for enforcement of its order does not turn on the rightfulness or wrongfulness of the strike of respondent's employees.

The situation which arose out of the employees' demands, and the refusal of the respondent company to accede to, or to arbitrate, the demands, clearly constituted a "labor dispute" within the definition of that term in Section 152 (9) of the National Labor Relations Act. And since by definition the term employee "shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute,"¹ it necessarily follows that for purposes of the National Labor Relations Act, the relationship of employee-employer still existed when the alleged unfair labor practices occurred; and that such relationship, for purposes of jurisdiction of the National Labor Relations Board, continued to exist from and including the date of the filing of the complaint in which it was charged that the company was engaging in unfair labor practices.

The order of the National Labor Relations Board was predicated upon the finding that the respondent company had been guilty of unfair labor practices, in that it had refused to bargain collectively with the representatives of the employees. There was some evidence to support this finding and this Court cannot disturb it. On the basis of such finding the Board is expressly authorized by the Act "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies" of the Act.

It was the duty of the National Labor Relations Board to consider the conduct of the employees of respondent company for the purpose

¹Title 29 U. S. C. A. § 152 (9).

"When used in section 151 to 198 of this title—

(9) The term "labor dispute" includes any controversy concerning terms, rights, or conditions of employment, or concerning the association or representation of persons in initiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

²Title 29 U. S. C. A. § 152 (3).

³Title 29 U. S. C. A. § 160 (c).

pe of determining whether or not the request for collective bargaining was made in good faith; for it would not seem that under the strict provisions of the Act that an employer could be charged with unfair labor practices for refusing to bargain collectively with his employees, if the facts disclosed that the employees were not seeking collective bargaining in a good faith effort to adjust labor disputes. Also since the order of the Board did not provide for back pay, it is a reasonable inference that the Labor Board attributed the interruption in employment, in part at least, to improper conduct of the striking employees.

In view of the recent decisions of the Supreme Court defining the power of the National Labor Relations Board under the Act, I am of the opinion that the law is with the petitioner, and that this Court should grant the petition for enforcement of the order of the Board.

And on the same day, to wit, the 28th day of April 1938, the following further proceedings were had and entered of record:

Thursday, April 28, 1938

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge, Hon. William M. Sparks, Circuit Judge, Hon. Walter E. Treanor, Circuit Judge.

6324

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

COLUMBIAN ENAMELING & STAMPING COMPANY, INC., RESPONDENT

**Petition for Enforcement of Order of the National Labor
Relations Board**

This cause came on to be heard on the petition for enforcement of the order of the National Labor Relations Board, the answers thereto, and the transcript of proceedings before said Board, and was argued by counsel.

In consideration whereof, it is ordered and adjudged by this Court that the petition for enforcement of order entered in this cause on January 14, 1936, by the National Labor Relations Board, be, and is hereby, denied.

And afterwards on, to wit, the 18th day of May 1938, there was filed in the office of the Clerk of this Court a petition for stay of mandate or other proceedings, which said petition is in the words figures following:

In the United States Circuit Court of Appeals for the Seventh
Circuit

No. 6324

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

COLUMBIAN ENAMELING AND STAMPING COMPANY, INC., RESPONDENT

Petition for Enforcement of Order of National Labor Relations
Board

Petition for stay of mandate or other process

To the Honorable, The Judges of said Court:

Your petitioner, the National Labor Relations Board, by Charles Fahy, General Counsel of the Board, Robert B. Watts, Associate General Counsel of the Board, I. S. Dorfman, and Ruth Weyand, Attorneys of the Board, states: that it is the petitioner in the above entitled cause; that on April 28, 1938, an Order was entered by this Court denying the petition of the Board for the enforcement of the Order of the Board; that this cause, having been finally determined in this Court, a Mandate or other process will issue to the National Labor Relations Board unless stayed by the further Order of this Court; that your petitioner is planning to and proposes to file a petition in the Supreme Court of the United States, within three months after the entry of the judgment of this Court in said cause, petitioning said Court to require by certiorari that this cause be certified to said Court for determination by it, in accordance with Section 240 (a) of the Judicial Court, as amended, (28 U. S. C. A. Sec. 347 (a)) and Section 8 of the Act of Congress of February 13, 1925 (28 U. S. C. A. Sec. 330 (a)).

Wherefore your petitioner prays that an order may be entered herein staying the issuance of a mandate or other process of this Court in this matter until the further order of this Court.

CHARLES FAHY,

General Counsel.

ROBERT B. WATTS,

Associate General Counsel.

I. S. DORFMAN,

RUTH WEYAND,

Attorneys of the National Labor Relations Board.

State of Illinois.

County of Cook, ss:

Ruth Weyand, being duly sworn, on oath deposes and says that she is an attorney at law, duly authorized to practice before the

Court, and an Attorney of the National Labor Relations Board; that she is the duly authorized Agent of the National Labor Relations Board for the purpose of making this Affidavit; that the National Labor Relations Board has directed Charles Fahy, General Counsel, and Robert B. Watts, Associate General Counsel of said Board, and this Affiant, to prepare and file in the Supreme Court of the United States a petition for a writ of certiorari on behalf of the National Labor Relations Board in the above entitled cause, and that said Charles Fahy, and said Robert B. Watts, and this Affiant have at present a bona fide intention of preparing and filing in the Supreme Court of the United States a writ of certiorari on behalf of said National Labor Relations Board, petitioner herein.

Further affiant saith not.

RUTH WEYAND.

Subscribed And Sworn To, before me, a Notary Public in and for the County of Cook, State of Illinois, this 17th day of May A. D. 1938.

ANNA M. M. ELLIGOTT,

Notary Public in and for the County of Cook and State of Illinois.

Com. Expires 12-7-41.

[Endorsed:] Filed May 18, 1938. Frederick G. Campbell, Clerk. And afterwards on, to wit, the 25th day of May 1938, the following further proceedings were had and entered of record:

Wednesday, May 25, 1938

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge.

6324

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.s.

COLUMBIAN ENAMELING & STAMPING CO., INC., RESPONDENT

Petition for Enforcement of Order of the National Labor Relations Board

On petition of counsel for petitioner, it is ordered that mandate or other process in this cause be, and it is hereby, stayed until the further order of this Court, and that counsel for petitioner promptly file a petition for a writ of certiorari in the Supreme Court of the United States, and forthwith file proof of the filing of said petition in this Court.

United States Circuit Court of Appeals for the Seventh Circuit

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 30 inclusive, contain a true copy of the following papers filed and proceedings had: Order of July 13, 1937; Proof of Service, filed July 13, 1937; Stipulation, filed July 27, 1937; Stipulation, filed Sept. 1, 1937; Order of Sept. 2, 1937; Petition of Harry Hiatt et al. to intervene, filed Nov. 24, 1937; Order of Dec. 3, 1937; Answer of intervenors Harry Hiatt et al., filed Dec. 18, 1937; Order of Feb. 23, 1938; Opinion filed April 28, 1938; Judgment entered April 8, 1938; Motion for stay of mandate or other process, filed May 18, 1938; Order of May 25, 1938:

And also references to the filing of the following documents on the pages of the printed record where said documents appear in the Petition for Enforcement of Order of N. L. R. B.; Certificate of N. L. R. B.; Order of July 27, 1937; Answer of respondent to petition of N. L. R. B.; and Certified Copy of Amendment to decision, filed Sept. 2, 1937:

In the following entitled cause: National Labor Relations Board, Petitioner, vs. Columbian Enameling and Stamping Company, Respondent, No. 6324, October Term, 1937, as the same remains in the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribed my name and the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 30th day of June A.D. 1938.

[SEAL]

FREDERICK G. CAMPBELL,

*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit*

Supreme Court of the United States

Order allowing certiorari

Filed October 10, 1938

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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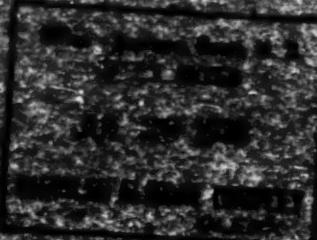
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No.

In the Supreme Court of the United States

Argued April 1, 1935

NATIONAL LABOR RELATIONS BOARD, Petitioner,

**COLUMBUS EXAMINING AND STAMPING COMPANY,
INC.**

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT**



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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

**COLUMBIAN ENAMELING AND STAMPING COMPANY,
INC.**

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT**

The Acting Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit entered on April 28, 1938 (R. 425), denying the petition of the National Labor Relations Board for enforcement of its order against Columbian Enameling and Stamping Company, Inc.

OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 372-393) are reported in 1 N. L. R. B. 181. The opinions of the Circuit Court of Appeals (R. 415-425) are reported in 96 F. (2d) 948.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 28, 1938. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, assuming that employees have gone on strike in violation of an agreement between them and their employer, the employer is thereby freed from his obligation under the National Labor Relations Act to bargain collectively with representatives of his employees.
2. Whether such a strike terminates the strikers' status as employees within the meaning of the Act.
3. Whether the fact that such a strike was begun before the passage of the Act terminates the strikers' status as employees, or frees the employer from his duty to bargain collectively with their representative after the passage of the Act.
4. Whether the strike in this case did constitute a breach of the agreement between respondent and its employees.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp. II, Title 29, Sec. 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include
* * * any individual whose work has
ceased as a consequence of, or in connection
with, any current labor dispute or because
of any unfair labor practice, and who has
not obtained any other regular and substan-
tially equivalent employment, * * *

(9) The term "labor dispute" includes
any controversy concerning terms, tenure
or conditions of employment, or concerning
the association or representation of persons
in negotiating, fixing, maintaining, chang-
ing, or seeking to arrange terms or condi-
tions of employment, * * *

**SEC. 7. Employees shall have the right to
self-organization, to form, join, or assist
labor organizations, to bargain collectively
through representatives of their own choos-
ing, and to engage in concerted activities,
for the purpose of collective bargaining or
other mutual aid or protection.**

**SEC. 8. It shall be an unfair labor prac-
tice for an employer—**

(1) To interfere with, restrain, or coerce
employees in the exercise of the rights guar-
anteed in Section 7.

* * * * *

(5) To refuse to bargain collectively with
the representatives of his employees, subject
to the provisions of Section 9 (a).

**SEC. 9. (a) Representatives designated or
selected for the purposes of collective bar-
gaining by the majority of the employees in**

a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

SEC. 10:

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

STATEMENT

Pursuant to Section 10 (b) of the National Labor Relations Act, the National Labor Relations Board, on November 21, 1935, issued a complaint and notice of hearing, which were duly served upon respondent (R. 7-10). The complaint alleged in substance that respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (5), of the Act (R. 8-10). A hearing was held on Decem-

ber 9, 10, and 11, 1935, before a Trial Examiner duly designated by the Board (R. 19-370). Briefs were filed with the Board by respondent and the complainant Union. Thereafter, on February 14, 1936, the Board issued its findings of fact, conclusions of law, and order (R. 372-393). The facts as found by the Board and as shown in the evidence are as follows:

Respondent is engaged in the manufacture and sale of metal utensils and other products and is extensively engaged in commerce among the States and with foreign nations (R. 375-376). On July 14, 1934, respondent and Enameling and Stamping Mill Employees Union, No. 19694 (hereinafter termed the Union) entered into a contract (R. 15-17), effective for one year, which prescribed various conditions of employment and contained the following provision (R. 17):

In any case in which a satisfactory settlement of a dispute arising under this contract cannot be reached, such dispute shall be referred to a committee of arbitration composed of two persons selected by the Management, two persons selected by the Union, and fifth person to be selected by these four, who shall reach a decision which shall be final and binding upon both parties to this contract. There shall be no stoppage of work by either party to this contract pending decision by the Committee of Arbitration.

On January 4, 1935, the Union, at that time representing 476 of respondent's 500 odd production employees (R. 89, 173), submitted to the respondent a number of demands, including proposals that it be recognized as the bargaining representative of all the employees, that the Union cooperate with the Company in correcting defects in workmanship and in enforcing respondent's rules, that the Company agree to lay off any member of the Union who was suspended from the Union, and that minimum wages be increased at the end of ninety days if by that time unrest had been eliminated and production loss reduced to a normal minimum (Resp. Ex. 1; R. 382).¹ In a circular letter of January 21 to the employees individually, respondent rejected the proposals enumerated above (Pet. Ex. 1). On February 5 the Union wrote respondent asking that the proposals of January 4 be submitted to arbitration pursuant to the provision of the agreement set forth above (Resp. Ex. 14). On February 8 respondent wrote the Union, and at the same time stated in a circular to the employees individually, that it refused to arbitrate on the ground that the proposals of January 4 were not arbitrable under the July 1934 agreement (Pet. Ex. 3, 10).

¹ These proposals did not include a demand for a closed shop, although the summary of the facts by the court below (R. 416) indicates the contrary. Although such a demand had been made in 1934, it was not renewed in 1935 until March 17. See page 7, *infra*.

The Union subsequently presented other demands to respondent.² On March 11 the Union again presented its demands of January 4, and again received an unsatisfactory response (R. 211-212, 315-316). On March 17 the Union sent respondent a copy of resolutions adopted by it in which it declared that, whereas it had consistently adhered to every provision of the agreement, respondent had broken the agreement by refusing to arbitrate the demands made by the Union and by failing to comply with Section 9 of the agreement (see note 2), that respondent had been deliberately seeking to injure the Union by attacking the integrity of the Union Committee and thereby violating the principles of collective bargaining, and that "peace and harmony cannot exist under the present conditions owing to the unfair practices of the Company"; and it was resolved that the men would not continue to work with anyone eligible for Union membership who did not join the Union before March 23 (Pet. Ex. 2). On that day a strike was called (R. 64, 216). About 485 of 500 production employees of respondent were members of the Union at that time, and approximately 450 left

² The Union claimed that the employees were entitled under Section 9 of the agreement (R. 16) to two hours' pay for waiting time after a breakdown, and that the Company should stop sending circulars to the employees individually rather than communicating with their representatives (R. 314-315, 209-210: Resp. Ex. 15).

work (R. 173, 176-178, 377, 383).⁸ On March 30 respondent announced that the factory was closed indefinitely (Resp. Ex. 16).

Attempts to settle the strike were futile (R. 383-385). Respondent insisted, despite the fact that the vast majority of its employees belonged to the Union, that it would reopen the factory only "as an open shop without union recognition or agreement" (R. 384, Pet. Ex. 14, Resp. Ex. 17).

The strike was still in effect when the National Labor Relations Act was approved on July 5, 1935. On July 19 respondent began to take steps leading to the reopening of its plant (R. 70, 221, 384-385). On July 23, conciliators of the Department of Labor, at the request of the Union, attempted to open negotiations with respondent, and induced the president of respondent to agree to meet with the Union Committee. On that day respondent reopened its plant, and several days later respondent's president told the conciliators, contrary to his original promise, that he would not meet either with them or with the Union (R. 72-73, 143-145, 216, 238, 303-306, 385). By the middle of September respondent had employed a full force, including approximately 215 of the strikers (R. 239, 241-242). On September 20 and again on October 11 the Union wrote asking for a meeting to settle the strike, but received no reply (Pet. Ex. 5, R. 306).

⁸ The Union permitted about 35 men in the power house to remain at work (R. 178, 383).

The Board found that respondent's refusal to bargain with the Union after the request made on July 23 was an unfair labor practice in violation of Section 8, subdivisions (5) and (1), of the Act, and ordered respondent to cease and desist from refusing to bargain with the Union (R. 393). The Board further found that in view of the replacement of the strikers by new men after respondent's refusal to bargain, such an order would be futile unless the situation were restored to the *status quo* existing before the violation of the Act (R. 391). Accordingly, respondent was ordered to reinstate men employed on July 22, 1935, who had not received substantially equivalent employment elsewhere, discharging if necessary persons who were not employed on that date (R. 393).⁴

On July 9, 1937, the Board, pursuant to Section 10 (e) of the Act, filed with the Circuit Court of Appeals for the Seventh Circuit its petition for enforcement of the foregoing order (R. 1-4). On April 28, 1938, the court denied the Board's application (R. 425).

⁴ The order further provided that a preferred list should be created for those individuals employed on July 22 for whom there would be no jobs (R. 393). Back pay was not ordered. Respondent has argued that the order required the discharge of all men employed after July 22, 1935, regardless of whether such discharges were necessary to make room for men previously employed. That is not what the order means; and, as the Board advised the court below, it did not and does not intend the order to have any such effect.

Circuit Judge Evans found that the Board's findings with respect to respondent's refusal to bargain were supported by the evidence and that respondent had engaged in "an open defiant, flouting of the law of the land" (R. 422). He held, however, that the employees had gone on strike in violation of the agreement of July 14, 1934, and had thereby completely severed the employment relation and ended all obligation of respondent to bargain with their representatives (R. 421). Judge Evans further held that such action barred the employees, under the equitable doctrines of unclean hands and estoppel, from seeking relief against respondent's unfair labor practices (R. 421-423). He therefore held that the Board's petition for enforcement of its order should be denied (R. 423). Judge Sparks concurred in the result (R. 423).

Circuit Judge Treanor, dissenting, agreed with Judge Evans that the Board's findings with respect to the unfair labor practices were supported by evidence, but held in addition that the Board's findings that respondent had refused to arbitrate and that therefore the non-stoppage clause of the agreement had not been violated were supported by the record and conclusive upon the court. He further held that the strikers remained "employees" within Section 2 (3) of the Act, and that respondent's duty to bargain continued regardless of whether the strike was in breach of the agreement or not. An unfair labor practice having occurred, Judge Treanor held, the court should not deny en-

forcement to the Board's order upon equitable considerations which were not properly before it (R. 423-425).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the strike violated the agreement of July 14, 1934.
2. In not holding that individuals who cease work in connection with a current labor dispute remain employees for the purposes of the National Labor Relations Act, whether or not their cessation of work was in breach of contract.
3. In not holding that it is an unfair labor practice for an employer to refuse to bargain collectively with the authorized representative of his striking employees in an appropriate bargaining unit, whether or not the strike is in breach of contract.
4. In not holding that the National Labor Relations Act authorizes the National Labor Relations Board to require the reinstatement of striking employees, with whom the employer has wrongfully refused to bargain collectively, whether or not the strike is in breach of contract.
5. In not holding that the defenses of unclean hands and equitable estoppel, based upon conduct of the employees, cannot be urged against or defeat a petition by the National Labor Relations Board for enforcement of its order.

6. In not holding that the fact that the strike began before the passage of the Act had no effect upon the validity of the Board's order.

7. In refusing to enforce the Board's order as supported by the evidence and the findings.

REASONS FOR GRANTING THE WRIT

I

THE COURT BELOW DECIDED AN IMPORTANT QUESTION OF LAW CONTRARY TO THE PLAIN LANGUAGE OF THE NATIONAL LABOR RELATIONS ACT

The Circuit Court of Appeals found that respondent's conduct constituted an "open defiant, flouting of the law of the land" (R. 422). It did not indicate that the Board's finding that respondent had refused to bargain with the representative of the majority of its employees was unsupported by evidence, but held to the contrary. Nor did the court hold that the mere occurrence of a strike prior to such refusal had terminated the employee status of the members of the Union.

The court's refusal to enforce the Board's order appears to be predicated both on the hypothesis that the Union had called the strike in violation of the agreement of July 14, 1934, and on the fact that the strike commenced before the passage of the National Labor Relations Act. Upon this basis the court reached the conclusion that the strikers were not employees within the meaning of the Act.

It is clear from the opinion, however, that the fact that the strike commenced before the passage of the Act was regarded as of slight significance, since the court assumed, following *Jeffery-Dewitt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), cert. den., 302 U. S. 731, and *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), cert. den. May 23, 1938, that "ordinarily the status of employer-employee exists, although the strike occurred before the passage of the National Labor Relations Act and continued after its passage" (R. 420). The entire emphasis in the opinion is placed on the alleged breach of contract; no reason is suggested why the conjunction of the two facts should make any difference, and we think it fair to assume that the asserted misconduct of the employees was the true *ratio decidendi*.

This holding of the court below, that, because of what is at most a technical breach of contract by his employees, a public regulatory statute is rendered inoperative and cannot be applied by the Government to restrain the unlawful conduct of an employer is plainly unwarranted under the statute and is contrary to accepted principles of law. Moreover, in arriving at the premise upon which this conclusion was based—that the Union had violated the agreement—the court found it necessary completely to disregard undisputed facts showing that there had been no such violation. The

court's refusal to enforce the Board's order for this reason is thus plainly erroneous because (a) even if the strike were in breach of the contract, the court's refusal to enforce the order of the Board was in violation of the statute, and (b), the employees did not strike in violation of their contract.

A. EVEN IF THE STRIKE HAD BEEN CALLED IN VIOLATION OF A CONTRACT, THE COURT BELOW SHOULD HAVE ENFORCED THE BOARD'S ORDER

Even if the court below were correct in holding that the Union had broken its contract with the respondent, the court should not have denied enforcement to the Board's order. The Act nowhere provides that employers whose employees have violated agreements shall be exempt from its provisions. On the contrary, the Act declares that it shall be an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees" and *requires* the Board, upon a finding that an employer has engaged in such a practice, to issue a cease and desist order (Sections 8 (5) and 10 (e)).

The court below came to the conclusion that the Board's order was invalid (1) because the breach of contract terminated the employer-employee relationship between respondent and the strikers, and (2) because the doctrines of estoppel and unclean hands precluded the granting of relief to the strikers in a court of equity. The opinion seems

to join these two entirely unrelated propositions together. But whether regarded jointly or separately, the reasoning of the court below in support of them is plainly unsound.

1. The court below conceded (R. 420) that the existence of a strike does not interrupt the employer-employee relationship under the Act; the concession was of course essential in view of the statutory definition of employee as including "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute." Section 2 (3); *National Labor Relations Board v. Mackay Radio and Telegraph Co.*, 58 S. Ct. 904.

But the court held that if the strike was called in violation of a contract, the employment relationship no longer continued—a conclusion which can be supported under the statute only if the impropriety of a strike warrants a holding that the strikers have not ceased work in consequence of a current labor dispute. This is plainly a *non sequitur*. As this Court pointed out in the *Mackay* case (58 S. Ct. at 910):

The wisdom or unwisdom of the men, *their justification or lack of it*, in attributing to respondent an unreasonable or arbitrary attitude in connection with the negotiations, cannot determine whether, when they struck, they did so as a consequence of or in connection with a current labor dispute.
[Italics supplied.]

The decision below adopts the same line of reasoning as that of the same Circuit Court of Appeals in *Michaelson v. United States*, 291 Fed. 940, wherein the court held that railroad strikers were not "employees" within the meaning of the Clayton Act because railroad strikes were contrary to public policy and because the strike was called against compliance with a decision of the Railroad Labor Board. In reversing that decision, this Court said in language equally applicable here (266 U. S. 42, at 68):

To say that railroad employees are outside the provisions of the statute, is not to construe the statute, but to engrave upon it an exception not warranted by its terms. If Congress had intended such an exception, it is fair to suppose that it would have said so affirmatively. The words of the act are plain and in terms inclusive of all classes of employment; and we find nothing in them which requires a resort to judicial construction. The reasoning of the court below really does not present a question of statutory construction, but rather an argument justifying the supposititious exception on the ground of necessity or of policy—a matter addressed to the legislative and not the judicial authority.

2. Although the decision below purports to be based on the termination of the employment relationship resulting from a strike in breach of contract, the court does not discuss the statutory def-

inition of employee; on the contrary the court's argument seems to indicate that the breach of contract would have precluded the granting of relief by the Board even if the strikers had been employees. Here, too, in the language of the *Michaelson* case, *supra*, the court was not construing the statute but engrafting upon it an exception not warranted by its terms.

The tenor of the court's opinion indicates that it regarded the case as an equity suit between the employees and respondent. The *employees* were "estopped" (R. 421, 422); the *employees* were not "entitled to invoke the aid of a court of equity" (R. 423). Those expressions demonstrate that the court misconceives the nature of proceedings before the Board for the enforcement of the Act. The proceeding is not one in equity; it is exclusively statutory. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. at 48. The Board, representing the public interest, is the complainant in such proceedings. *Agwilines, Inc. v. National Labor Relations Board*, 87 F. (2d) 146 (C. C. A. 5th). The Union is not the moving party and the Board is not estopped or chargeable with unclean hands by reason of the conduct of the Union. As the Circuit Court of Appeals for the Ninth Circuit declared in *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138, 146, certiorari denied, No. 907, Oct. Term, 1937:

Respondent contends that the proceeding before us is an equitable proceeding; that the union's picketing resulted in violence, as the Board found, which was a violation of the laws of Washington, and therefore enforcement should be denied for the reason that the union has not come into the court with clean hands. It is not the union, but the Board, which is asking enforcement.

See to the same effect *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862, 872-873; certiorari denied, No. 970, Oct. Term, 1937.

But there is another equally fundamental reason why an employer is not exculpated by the improper acts of his employees. The Board's cease and desist orders look to the future; their purpose is to prevent the recurrence of conduct found by Congress and recognized by this Court to be "prolific causes of strife" which burden interstate commerce (*National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, at 42). The purpose of the Act is not to be achieved by leaving the employer free to engage in unfair labor practices whenever his employees or their representatives have acted unlawfully. Remedies are available against the illegal acts of employees in the state civil and criminal courts and under other statutes than this Act. The Act was not meant to cover the entire field of labor relations. Cf. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*,

supra, at 46. This was specifically recognized in the report of the Congressional committees recommending the passage of the Act.⁵

A distinction may be drawn between the effect of unlawful acts by strikers upon the power of the Board to issue cease and desist orders and the scope of affirmative relief to be granted in a particular case. The statute imposes upon the Board the mandatory duty of issuing a cease and desist order upon proof that an employer has engaged in an unfair labor practice, and the definitions of the unfair labor practices contain no exception for cases in which the employees have acted unlawfully (Sections 10 (c) and 8). It would be an abuse of author-

⁵ Compare the following statement by the Committee on Education and Labor of the Senate (Sen. Rep. No. 573, 74th Cong., 1st Sess.) in rejecting the proposal that the Board have power to prevent burdens to commerce occasioned by employee action (pp. 16-17):

"Nor can the committee sanction the suggestion that the bill should prohibit fraud or violence by employees or labor unions. The bill is not a mere police court measure. The remedies against such acts in the State and Federal courts and by the invocation of local police authorities are now adequate, as arrests and labor injunctions in industrial disputes throughout the country will attest. * * * In addition, the procedure set up in this bill is not nearly so well suited as is existing law to the prevention of such fraud and violence. * * * The only results of introducing proposals of this sort into the bill, in the opinion of the committee, would be to overwhelm the Board in every case with counter-charges and recriminations that would prevent it from doing the task that needs to be done."

This section of the report was quoted with approval by the Committee on Labor of the House of Representatives (H. Rept. 1147, 74th Cong., 1st Sess., p. 16).

ity under the Act for the Board to refuse to issue a cease and desist order because of the employees' improper conduct. In the granting of affirmative relief, however, there is room for the exercise of discretion, since the Board is empowered to order the taking of "such affirmative action * * * as will effectuate the policies of this Act" (Section 10 (e)). The Board has recognized that unlawful acts of strikers may make it inappropriate to grant affirmative relief which inures to their benefit. See, e. g., *In the Matter of Kentucky Firebrick Co. and United Brick and Clay Workers of America, Local Union, No. 510*, 3 N. L. R. B. No. 46; *In the Matter of Standard Lime & Stone Co. and Branch No. 175, Quarry Workers International Union of North America*, 5 N. L. R. B. No. 15.

The court below did not differentiate between the negative and affirmative portions of the Board's order, but invalidated it as a whole on the ground that the strikers had acted in breach of contract. Such a decision is plainly unwarranted under the statute.

In any event, however, there can be no question as to the appropriateness of the affirmative relief granted in this case. The Board ordered the respondent to reinstate (without back pay) strikers replaced by new men upon respondent's refusal to bargain with their representative. Ordering respondent to obey the law would have been futile, as the Board found, if respondent could have refused to reemploy the members of the Union who

continued on strike after the commission of the unfair labor practice. It can not be said that the strikers' prior conduct rendered the order of reinstatement any the less appropriate. There was a dispute between the Union and respondent as to which first violated the agreement. Such a dispute is of the kind usually settled in the civil courts. The losing party in a suit for breach of contract is not commonly treated as a law breaker, and the winning party is not thereby exempted from the operation of statutes prohibiting conduct regarded by the legislature as contrary to public policy.

In any event, it was for the Board and not for the court below to infer from the evidence whether or not ordering reinstatement in this case would effectuate the policies of the Act. *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261. The court below did not hold that the Board's finding that the relief was appropriate was unsupported by evidence; it merely substituted its conclusion for that of the Board, and "this can not be done." *Manufacturers Ry. Co. v. United States*, 246 U. S. 457, 482. The court treated the case as if it were an equity suit being tried *de novo* before it rather than a review, subject to statutory limitations, of a decision of the National Labor Relations Board. The court clearly had no power to determine the case on any such basis.

B. THE STRIKE DID NOT CONSTITUTE A BREACH OF CONTRACT

In concluding that the strike called by the Union was a breach of contract, the court relied entirely upon the provision in the agreement of July 14, 1934, that "There shall be no stoppage of work by either party to this contract pending decision by the Committee of Arbitration" (R. 420, 423, 17). The court did not dispute the findings of the Board that on January 4, 1935, the Union made certain demands on respondent, that respondent rejected these demands, that the Union requested arbitration pursuant to the agreement, and that respondent refused the request on the ground that the questions were not arbitrable. While the court enumerated these facts in a footnote to its opinion (R. 416-417), it ignored them completely in deciding that the Union had violated the contract.

We need not here consider whether respondent was justified in refusing to arbitrate the demands. If respondent's position that the demands were not arbitrable under the agreement was correct, the Union was not required to refrain from stopping work "pending decision by the Committee of Arbitration," and accordingly the strike did not constitute a breach of the agreement. If, on the other hand, the demands were arbitrable, respondent itself violated the agreement by refusing to permit their submission to arbitration, and the Union was released from its promise not to strike pending

arbitration. See Pet. Ex. 2, p. 7, *supra*. Which-ever view is taken, it is clear that the Union's action in calling a strike without awaiting arbitration was not a breach of contract. In entirely disregarding the Board's findings of fact that the Union had sought to arbitrate the matters in controversy and that respondent had refused, the court violated the express statutory direction that "The findings of the Board as to the facts, if supported by evidence, shall be conclusive" (Section 10 (e)). *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261.

II

THE DECISION OF THE COURT BELOW IS IN CONFLICT WITH A DECISION OF THE CIRCUIT COURT OF AP- PEALS FOR THE SECOND CIRCUIT

In *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862, certiorari denied, No. 970, Oct. Term, 1937, the Board found that the company had refused to bargain collectively with the union representing the majority of its employees, in violation of Section 8 (5) of the Act. The company contended in the Circuit Court of Appeals that the union had called a strike in violation of a binding contract, that the union had been guilty of violence during the strike, and that because of such misconduct by the union the Board's order should not be enforced (see respondent's brief in the Circuit Court of Appeals, pp. 35-37). The Circuit Court of Appeals for the

Second Circuit found it unnecessary to determine whether the union had in fact been guilty of the alleged misconduct. Assuming the charge to be well founded, the court held it to be immaterial. The court declared, in language plainly demonstrating the existence of a conflict^{*} between that case and the decision of the Circuit Court of Appeals for the Seventh Circuit here (94 F. (2d) 872-873):

There remains only the defence raised by the respondent that the union has disqualified itself by its own misconduct from appealing to the Board; a carry over from the doctrine of equity that the court will not intervene in favor of one who has been guilty of wrongful conduct in the transaction in question. This defence was overruled in *National Labor Relations Board v. Carlisle Lumber Co.*, *supra*, 94 F. (2d) 138, and we agree, although our reasons go beyond the procedural peculiarity that the Board is the petitioner. * * * the conduct of a

* In its reply to the Board's brief in opposition to the granting of a writ of certiorari, Remington Rand, Inc., pointed out that the decision in that case conflicted with that of the Circuit Court of Appeals for the Seventh Circuit in the *Columbian* case, which had been decided since the filing of the petition for certiorari. Despite the conflict on the point here involved, it is believed that this Court properly denied certiorari in the *Remington Rand* case, inasmuch as the question of the effect of the misconduct of the employees was not a substantial one on the facts there presented, and was correctly decided by the Circuit Court of Appeals for the Second Circuit.

union, like that of an employer, not only during the negotiations when there are any, but before there are, may be relevant in ascertaining whether the proposal to confer is genuine, or only part of the tactics of the fight. Nothing else can be material; though the union may have misconducted itself, it has a locus poenitentiae; if it offers in good faith to treat, the employer may not refuse because of its past sins. * * *

III

THE PRIMARY QUESTION PRESENTED IS OF GREAT PUBLIC IMPORTANCE

The question whether misconduct by employees has the result of exempting their employer from the National Labor Relations Act is a question of public importance which should be decided by this Court. Various aspects of this problem have arisen in cases before the Circuit Court of Appeals, and the different courts have adopted varying and, in some cases, conflicting methods of dealing with it. See, in addition to the instant case, *National Labor Relations Board v. Fansteel Metallurgical Corp.* (C. C. A. 7th, decided July 22, 1938); *National Labor Relations Board v. The Kentucky Fire Brick Company* (C. C. A. 6th, decided June 29, 1938); *Standard Lime & Stone Co. v. National Labor Relations Board* (C. C. A. 4th, decided June 3, 1938); *National Labor Relations Board v. Remington-Rand, Inc., supra*; *National Labor Relations Board v. Carlisle Lumber Co., supra*. In the

recent *Fansteel* case, the Circuit Court of Appeals for the Seventh Circuit went so far as to hold that an employer's unfair labor practices in using labor spies, in dominating and supporting a "company union," and in refusing to bargain collectively, could not be prohibited by the Board because of misconduct by his employees.

The establishment of an exemption of the kind approved by the court below would seriously limit the intended scope of the Act. As has been pointed out, an employer injured by the misconduct of his employees has various familiar remedies available in the ordinary civil and criminal courts (*supra*, pp. 18-19). The purpose of the National Labor Relations Act is to safeguard commerce by guaranteeing to employees protection of the rights conferred by this statute.

It is particularly important that exemptions from the Act be not created for all employers whose employees have broken contracts. As collective bargaining becomes common, collective agreements between employers and employees will become more numerous and comprehensive. If the application of the Act is to depend upon technical compliance with the terms of such agreements, a large number of industrial disputes may be removed from its scope. It is not always easy to determine which side first violates an agreement. Moreover, would the employees involved lose their right to choose representatives and to bargain through them? Is the protection of the Act withdrawn from all em-

loyees because of the misconduct of some? These problems do not arise if the Act is construed according to its plain terms. They do arise under the doctrine enunciated by the court below.

CONCLUSION

Wherefore it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit should be granted.

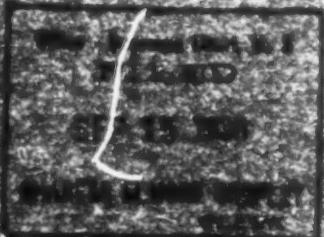
N. A. TOWNSEND,
Acting Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

JULY 1938.



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APR 22 1938

In the Supreme Court of the United States

Argued April, 1938.

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

COLUMBIAN EXAMINING AND STAMPING COMPANY,

INTERVENOR.

**ON PETITION FOR A WRE OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT.**

**MEMORANDUM FOR THE NATIONAL LABOR RELATIONS
BOARD IN REPLY TO RESPONDENT'S BRIEF IN
OPPOSITION**

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Supreme Court of the United States

OCTOBER TERM, 1938

No. 229

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

IBIAN ENAMELING AND STAMPING COMPANY,
INC.

ITION FOR A WRIT OF CERTIORARI TO THE UNITED
ES CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT

MANDUM FOR THE NATIONAL LABOR RELATIONS
BOARD IN REPLY TO RESPONDENT'S BRIEF IN
POSITION

brief filed by respondent in opposition to
petition for certiorari in the instant case raises
new issues and contains several statements
should not be allowed to pass unchallenged.

I

court below held, we believe incorrectly
(pp. 22-23), that the strike called by the
was a breach of the contract provision for-
g a stoppage of work during arbitration.
ndent now attempts to establish that the

strike breached the contract in a wholly different respect, in that it was a strike for a closed shop, whereas the contract expressly provided for an open shop. Respondent now claims that (Br. in opp., p. 5)—

the only real dispute between the Union and the respondent was on the basis of the closed shop. Time after time commencing with the negotiation of the Indianapolis Agreement and throughout the period of the agreement preceding the strike, the question of the closed shop was raised.

These statements, we submit, are not supported by the record. On the contrary, the record shows that although the Union had between July 1934 and November 1934 expressed a desire for a closed shop, it did not incorporate such a request in the proposals of January 4, 1935, which led directly to the controversy involved in this case, and that between the end of November 1934 and the resolution of March 17, 1935, no such demands were made.¹ Not until respondent had refused to arbitrate the proposals made by the Union on January 4 and thereby, according to the Union, had itself

¹ The detailed record showing is as follows: Just before the 1934 agreement was signed, the Union Scale committee disclaimed the remark of one of its members that she would not work with a "scab" (R. 187). Thereafter there were meetings between the Scale committee and respondent's officials on August 8, August 30, September 5, and September 21, 1934, but the closed shop issue was not raised at any of them (R. 120-122, 188-191). At a further meeting on November 26, 1934, a representative of the Union stated

first broken the agreement, did the Union, on March 17, express its desire for a closed shop. The Union's resolution of that date, which constituted an announcement of the strike and recited the grievances impelling the Union's decision, represents in substance a rescission of the 1934 agreement on the ground of the respondent's prior violation. Under these circumstances the Union can scarcely be charged with a breach of contract in advancing the closed shop issue at that time; nor is there any support for such a claim in the decision of the court below.

Respondent raises a second new issue in contending that even if the strikers were employees within the meaning of the Act on July 23, it did not violate Section 8 (5) in refusing to meet with their representatives on that date. Specifically, respondent claims that the closed shop was "the only real issue" ever existing between it and the Union; that an impasse on that subject had prevailed throughout the period from July 1934 to March 1935; and

that it "would like to have" a closed shop (R. 199), but promptly withdrew the request upon its rejection by respondent (R. 199-201). Matters remained in that situation until the Union's resolution of March 17 declaring the strike described in the text.

Respondent seeks to establish such a demand by implication in a proposal that it lay off "any employee" suspended from the Union (Brief in opposition, p. 6). The proposal actually made did not contain the phrase used by respondent, but only requested the laying off of "any member of the Union who becomes suspended," not any "employee" (Resp. Ex. 1). This obviously is not a request for a closed shop.

that no occasion for further negotiations existed on July 23 since the Union had renewed the closed-shop proposal at the June 11 meeting (Brief in opposition, pp. 8-9).

Respondent's assertions are faulty in point of fact, for, as pointed out above, the closed shop was not the real issue, and was not the source of any impasse in the negotiations preceding the strike. Respondent is further in error in suggesting that efforts to settle the strike on June 11 were unsuccessful because of the Union's renewal then of the closed-shop demand. While the closed shop was discussed at that meeting (at whose instance respondent's president could not remember) (R. 301), the actual barrier to any settlement of the strike on that occasion was respondent's insistence that it would reopen the plant only "as an open shop without union recognition or agreement" (Petition, p. 8). In such circumstances, respondent cannot assert that its refusal to meet with the Union on July 23 was based upon any earlier impasse over the closed shop. The flat statement of respondent's president to the Department of Labor conciliator that "I would not have any meeting with him or with the Scale Committee" (R. 305), plainly foreclosed negotiations upon any and all subjects, including the Union's principal proposals of January 4.

In any event, circumstances had so changed by July 23 that regardless of the nature and outcome of the earlier negotiations respondent was obli-

gated to respond to the overtures then made by the conciliators in behalf of the Union. Nearly 6 weeks had passed since the June 11 meeting; martial law had been declared and picketing had been forbidden; the plant had reopened; and respondent was attempting to enlist a full working force. The fact that the Union on July 23 approached respondent through conciliators—persons primarily interested in composing and compromising differences—is significant that it was in a conciliatory frame of mind and that negotiations, if then undertaken, promised every hope of a peaceful settlement. A decision of the Fourth Circuit is directly in point. *Jeffrey-DeWitt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134, certiorari denied, 302 U. S. 731.

II

Respondent attempts to avoid the conflict with the decision in *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d) by stating that the alleged misconduct of the employees in that case did not precede but followed the commission of the employer's unfair labor practices. The two cases are not so distinguishable. In the *Remington Rand* case, the company placed considerable emphasis in the Circuit Court of Appeals and in this Court on the fact that the employees' misconduct preceded the unfair labor practice. See *Remington Rand*'s brief in C. C. A., pp. 13, 35-36; Petition, No. 970, October Term, 1937, pp.

21-22. Moreover, it is plain from the opinion that the court assumed that the alleged misconduct preceded the commission of the unfair labor practices, for it said (94 F. (2d) at p. 873)—

though the union may have misconducted itself, it has a locus poenitentiae; if it offers in good faith to treat, the employer may not refuse because of its past sins.

III

Respondent contends (Brief in opposition, p. 12) that the Board's order in question is invalid under the decision of this Court in *National Labor Relations Board v. Mackay Radio and Telegraph Company*, 304 U. S. 333. Respondent seems to understand the *Mackay* case to hold that an employer, under any and all circumstances, is entitled "to protect and continue his business by supplying places left vacant by strikers." In quoting from this Court's opinion, respondent ignores the vital qualifying phrase in the same sentence limiting this right to employers "guilty of no act denounced by the statute." See 304 U. S. at p. 345.² Respondent

² Respondent does equal violence to the decision of the Second Circuit in the *Black Diamond* case (94 F. (2d) 875, cert. denied May 23, 1938). In approving the order of reinstatement of the strikers in that case the court was careful to point out (p. 879):

"From the date of the respondent's first unfair practice, its ordinary right to select its employees became vulnerable. Accordingly it was proper for the Board to order it to discharge all engineers hired for the first time since December 14, 1936 [the date of the refusal to bargain] * * *."

here did not begin to replace the strikers until July 23, and it was immediately following that date that the unfair labor practice—refusing to meet with the conciliators and the representatives of the Union—was committed. Not until September, long after the unfair labor practice, did respondent have a full staff of employees.

Respondent states that on June 11, 1935, all of the former employees "were offered their jobs back without discrimination and without reference to their participation in the strike" (Brief in opposition, p. 12). Respondent fails to state that this offer was made with the express reservation that it was to be "without recognition of the union" (R_f 301), which at the time represented substantially all of respondent's employees.

Respectfully submitted,

✓ ROBERT H. JACKSON,

Solicitor General.

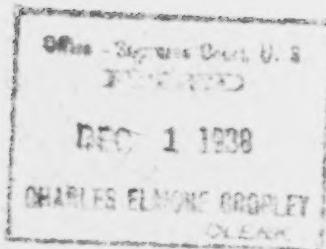
CHARLES FAHY,

General Counsel,

National Labor Relations Board.

SEPTEMBER, 1938.

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No. 229

In the Supreme Court of the United States

OCTOBER TERM, 1938

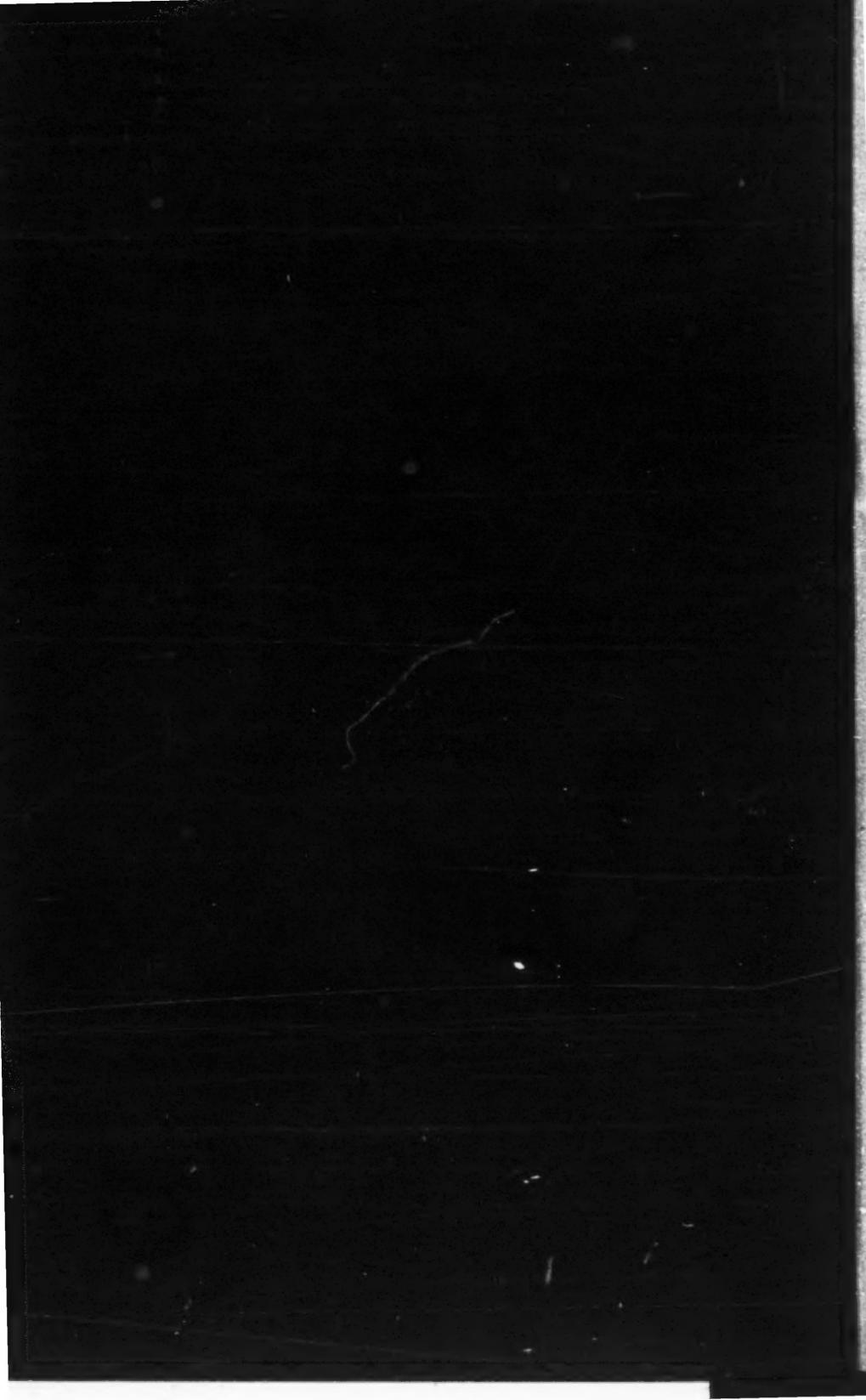
NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

COLUMBIAN ENAMELING AND STAMPING COMPANY,
INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD



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OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 372-293) are reported in 1 N. L. R. B. 181. The majority and dissenting opinions in the Circuit Court of Appeals (R. 415-425) are reported in 96 F. (2d) 948.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 28, 1938 (R. 425). Petition for certiorari was filed on July 28, 1938, and was

granted on October 10, 1938 (R. 429). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1928, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, assuming that employees have gone on strike in violation of an agreement between them and their employer, the employer is thereby freed from his obligation under the National Labor Relations Act to bargain collectively with the representatives of his employees.
2. Whether such a strike terminates the strikers' status as employees within the meaning of the Act.
3. Whether the fact that such a strike was begun before the passage of the Act terminates the strikers' status as employees, or frees the employer from his duty to bargain collectively with their representative after the passage of the Act.
4. Whether the strike in this case did constitute a breach of the agreement between respondent and its employees.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp. III, Title 29, Sec. 151 *et seq.*) are set forth in Appendix A, *infra*, pp. 42-43.

STATEMENT

Pursuant to a charge (R. 5-7) duly filed by the Enameling and Stamping Mill Employees Union, No. 19694 (hereinafter referred to as the Union), a labor organization, the National Labor Relations Board, on November 21, 1935, issued a complaint and notice of hearing, which were duly served upon respondent (R. 7-10). In addition to jurisdictional allegations, the complaint alleged in substance that respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) of the Act (R. 8-10). On November 27, 1935, respondent filed an answer (R. 11-18), in which it denied the commission of the unfair labor practices. A hearing was held on December 9, 10, and 11, 1935, before a Trial Examiner duly designated by the Board (R. 19). Briefs were filed with the Board by respondent and the complainant Union. Thereafter, on February 14, 1936, the Board issued its findings of fact, conclusions of law, and order (R. 372-393). The facts, as found by the Board and as shown by the evidence, are as follows:

Respondent, an Indiana corporation with its plant at Terre Haute, Indiana, is engaged in the manufacture and sale of metal utensils and other products, and is extensively engaged in commerce among the States and with foreign nations (R. 375-376).

On July 14, 1934, respondent and the Union entered into a contract (R. 15-17), effective for

one year, but terminable by either party on thirty days' notice, which prescribed various conditions of employment and contained the following provision (R. 17):

In any case in which satisfactory settlement of a dispute arising under this contract cannot be reached, such dispute shall be referred to a committee of arbitration composed of two persons selected by the Management, two persons selected by the Union, and a fifth person to be selected by these four, who shall reach a decision which shall be final and binding upon both parties to this contract. There shall be no stoppage of work by either party to this contract pending decision by the Committee of Arbitration.

Respondent met with the Union Scale Committee, which had been appointed by the Union to deal with the management (R. 377) at various times subsequent to July 14, 1934 (R. 377-379). On January 4, 1935, the Union submitted to respondent a number of demands: that it be recognized as the bargaining representative of all the employees, that the Union cooperate with respondent in correcting defects in workmanship and in enforcing respondent's rules, that respondent agree to lay off any member of the Union who was suspended from the Union, and that minimum wages be increased at the end of ninety days if by that time unrest had been eliminated and production

loss reduced to a normal minimum (R. 379, 382).¹ In a circular letter of January 21, sent to each employer individually, respondent rejected the proposals (R. 379). On February 5, the Union wrote respondent asking that the proposals of January 4 be submitted to arbitration pursuant to the provision of the agreement set forth, *supra*, p. 4 (R. 379). The proposals were discussed in a meeting with the Union on February 7, apparently to show that they were not disputes arising under the contract (R. 380-381). On February 8 respondent wrote the Union, and at the same time stated in a circular letter to the employees individually, that it refused to arbitrate on the ground that the proposals of January 4 were not arbitrable under the agreement (R. 381).

The Union subsequently presented other demands to respondent.² On March 11 the Union

¹Contrary to the statement in the chronological summary of the facts by the court below (R. 416), these proposals did not include a demand for a closed shop. Such a demand had been made and withdrawn in 1934 (R. 378-379), but it was not renewed in 1935 until March 17 (R. 383). See *infra*, pp. 20-28.

²The Union claimed, on February 7 and March 5, that under Section 9 of the agreement (R. 16) employees were entitled to two hours' pay for waiting time after a breakdown (R. 379-380; see footnote 8, p. 24, *infra*). Respondent disagreed, and no arbitration was requested (R. 380). The Union also claimed, on February 9 and March 5, that respondent should stop sending circulars to the employees individually rather than communicating with their representatives (R. 381-382). Respondent agreed to allow the Scale Committee to read and object to the circulars before they were sent so that changes could be made wherever possible (R. 382).

renewed its demands of January 4, at a meeting with respondent's officials, but respondent merely reiterated its prior rejection of each proposal (R. 382). On March 17 the Union sent respondent a copy of resolutions adopted by it which declared that, whereas the Union had consistently adhered to every provision of the agreement, respondent had broken it by refusing to arbitrate the demands made by the Union, and by failing to live up to the provision for two hours' minimum pay (see footnote 2, p. 5, *supra*) (R. 383); that respondent had been deliberately seeking to injure the Union by attacking the integrity of its committee and thereby violating the principles of collective bargaining; and it was resolved that in the interests of peace and harmony the men would not continue to work with anyone eligible for Union membership who did not join the Union before March 23 (R. 383).

On March 23, 1935, a strike was called (R. 383). About 485 of respondent's 500 production employees were members of the Union at that time (R. 377), and approximately 450 left work, the Union allowing about 35 men in the power house to remain (R. 383). On March 30 respondent announced that the factory was closed indefinitely (R. 383).

Various attempts to settle the strike were futile (R. 383-385). Respondent insisted, despite the fact that the vast majority of its employees belonged to the Union, that it would reopen the fac-

tory only "as an open shop without union recognition or agreement" (R. 383-384).

On July 5, 1935, when the National Labor Relations Act was approved, the strike was still in effect. On July 19, respondent began to take steps leading to the reopening of its plant (R. 384-385). On July 23, conciliators of the Department of Labor, at the request of the Union, attempted to open negotiations between respondent and the Union, and induced the president of respondent to agree to meet the Union's Scale Committee (R. 385). On that day respondent reopened its plant and several days later respondent's president told the conciliators, contrary to his original promise, that he would not meet either with them or with the Union (R. 385). By August 19, approximately 190 of the production employees of March 23 had returned to work, and by the middle of September respondent had employed a full force (R. 385, 400). On September 20, and again on October 11, the Union wrote asking for a meeting to settle the strike, but received no reply, although respondent received the requests (R. 386).

The Board found that respondent's refusal to bargain with the Union upon the request made on July 23 was an unfair labor practice in violation of Section 8 (1) and (5) of the Act, and ordered respondent to cease and desist from its refusal to bargain with the Union (R. 393). The Board further found that in view of the replacement of the strikers by new men after respondent's refusal

to bargain, the cease and desist order would be futile unless the situation were restored to the *status quo* existing before the violation of the Act (R. 391). Accordingly the Board ordered respondent to reinstate men employed on July 22, 1935, who had not received substantially equivalent employment elsewhere, discharging if necessary persons who were not employed on that date (R. 393).³

On July 9, 1937, the Board, pursuant to Section 10 (e) of the Act, filed with the Circuit Court of Appeals for the Seventh Circuit its petition for enforcement of the foregoing order (R. 1-5). On August 11 respondent answered the petition (R. 4a-4d). On November 18 a petition for intervention by certain employees of the respondent was filed (R. 406-412) and was granted on December 3 (R. 412), whereupon the intervenors filed, on December 18, an answer to the Board's petition for enforcement (R. 413-415). On April 28, 1938, with Circuit Judge Treanor dissenting, the court denied the Board's application (R. 425). A peti-

³ The order further provided that a preferred list should be created for those individuals employed on July 22 for whom there would be no jobs after the discharge of those first employed following the unfair labor practices (R. 393). Back pay was not ordered. Respondent has argued that the order required the discharge of all men employed after July 22, 1935, regardless of whether such discharges were necessary to make room for men previously employed. That is not what the order means; and, as the Board advised the court below, it did not and does not intend the order to have any such effect.

tion for a stay of mandate was filed by the Board on May 17, 1935 (R. 426-427), and granted on May 25, 1938 (R. 427). On October 10, 1938, this Court granted certiorari (R. 428).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the strike violated the agreement of July 14, 1934.
2. In not holding that individuals who cease work in connection with a current labor dispute remain employees for the purposes of the National Labor Relations Act, whether or not their cessation of work was in breach of contract.
3. In not holding that it is an unfair labor practice for an employer to refuse to bargain collectively with the authorized representative of his striking employees in an appropriate bargaining unit, whether or not the strike is in breach of contract.
4. In not holding that the National Labor Relations Act authorizes the National Labor Relations Board to require the reinstatement of striking employees, with whom the employer has wrongfully refused to bargain collectively, whether or not the strike is in breach of contract.
5. In not holding that the defenses of unclean hands and equitable estoppel, based upon conduct of the employees, cannot be urged against or defeat a petition by the National Labor Relations Board for enforcement of its order.

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6. In not holding that the fact that the strike began before the passage of the Act had no effect upon the validity of the Board's order.
7. In refusing to enforce the Board's order as supported by the evidence and the findings.

SUMMARY OF ARGUMENT

I

A. Respondent's argument that it did not violate Section 8 (5) of the Act is based, first, upon its contention that there is no evidence to support the finding of the Board that it refused to bargain with the Union. The contention can not be supported. The court below refused to accept it, and it is completely disproved by the uncontradicted testimony of respondent's president.

B. Respondent's second contention, that at the time of the refusal to bargain the Union did not represent the majority of its employees, is also without merit. Respondent does not deny that the Union had a majority if the strikers remained employees within the meaning of the Act, but urges that because of two factors the strike terminated the employment relationship. The first factor—that the strike began prior to the effective date of the Act—is completely irrelevant. Section 2 (3) of the Act, which includes within the term "employee" individuals "whose work has ceased as a consequence of, or in connection with, any current labor dispute", is plainly applicable and controlling. Indeed, the strikers remained employees at

common law. The second factor—an alleged breach of contract which was at most a technical breach—is equally irrelevant. This Court held in *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 344, that whether there is a "labor dispute" does not depend upon the justification of the position of the parties. A contrary holding would be at odds with the intention of Congress expressed in the Act, and would frustrate in important measure the ends sought to be achieved.

C. Finally, respondent contends that further negotiations were not required because they would have been futile. The record, however, shows that at the time of the request there was a reasonable probability that by full and fair collective bargaining with the Union, respondent could peacefully have settled the strike. Even if an impasse had been reached at the time the strike took place, conditions had so changed by the time the request to bargain was made that there then existed a reasonable probability of a peaceful settlement of the dispute.

II

Upon the finding that respondent had violated Section 8 (5) of the Act, the court below should have enforced the cease and desist portions of the Board's order. Upon a finding by the Board that an employer has committed an unfair labor practice, under Section 10 (c) the Board must issue a cease and desist order which should be enforced

by the courts. The contrary result reached by the court below, upon the ground that the alleged breach of contract by the Union "estopped" it to seek enforcement of the order, is plainly erroneous. Enforcement proceedings under the Act are statutory, and it is the Board, not the employees, who is the complainant. In that capacity, the Board represents the public interest in obtaining compliance with the statute, and can certainly not be "estopped" or charged with unclean hands by reason of the conduct of the employees. The decision of the court below is contrary to both the policy of the Act and the intent of Congress as shown by the legislative history of the Act.

III

The court below also refused to enforce the order of the Board requiring respondent to reinstate those persons who had been its employees at the time the unfair labor practice occurred. In this respect, too, we submit that the court erred. By Section 10 (c) of the Act the Board was plainly empowered to order reinstatement. Whether, in the circumstances of a particular case, reinstatement will effectuate the purposes of the Act is a matter for the discretion of the Board, the exercise of which will not be disturbed by the courts unless plainly unreasonable. Here the reinstatement order was essential to carry out the policy of the Act, since to have denied it would have been to allow the effects of the unfair labor practice to

continue. That the employees had been guilty of what can at most be described as a technical and minor breach of contract does not lead to a contrary conclusion.

ARGUMENT

The order of the National Labor Relations Board here involved (R. 392-393) requires respondent to cease and desist from refusing to bargain collectively with the Union as the exclusive representative of respondent's production employees. In addition, as affirmative relief necessary to restore the situation existing prior to the violation of the Act, respondent is ordered to discharge from its employment all production employees who were not employed by it on July 22, 1935, reinstate to the vacancies so created individuals who were so employed and have not since received substantially equivalent employment elsewhere, and to place the remainder of such individuals on a preferred list. The order was completely set aside by the court below. In reaching its decision, the court refused to accept respondent's contention that there is no evidence to support the finding of the Board that it refused to bargain collectively in violation of Section 8 (5). It did, however, accept the further argument that a strike by the employees which it found to be in breach of a contract disqualified them from seeking relief before the Board, and required that enforcement be denied to all portions of the order.

We submit that the order of the Board should have been enforced in all respects. In Point I we shall show that the evidence adequately supports the Board's finding that respondent refused to bargain collectively in violation of Section 8 (5) of the Act. In Point II we shall show that the alleged violation of the contract did not warrant the refusal of the court below to enforce the cease and desist provisions of the Board's order. Finally, in Point III, we shall show that the reinstatement provisions of the Board's order should also have been enforced.

I

THE EVIDENCE SUPPORTS THE BOARD'S FINDING THAT RESPONDENT REFUSED TO BARGAIN COLLECTIVELY WITH THE AUTHORIZED REPRESENTATIVES OF ITS EMPLOYEES IN VIOLATION OF SECTION 8 (5) AND (1) OF THE ACT

A. RESPONDENT REFUSED, ON REQUEST, TO MEET AND NEGOTIATE WITH THE UNION

Respondent contends that there is no substantial evidence to support the finding that it refused to bargain with the Union on or about July 23, 1935 (R. 392). The court below did not agree; indeed, it stated that respondent had engaged in "an open, defiant flouting of the law of the land" (R. 422).

The evidence in support of the finding is contained in the testimony of respondent's president, Gorby. He testified that on July 23 or 24

he had a three-hour conference with two conciliators of the Conciliation Service of the United States Department of Labor (R. 303), who had been asked by the Union to try and arrange a meeting between the representatives of the Union and respondent (R. 72-73, 144). Gorby admitted that the request for a meeting was made (R. 304), and that he agreed to meet with the Union committee (R. 304-305). Gorby did not think that the conciliators mentioned the purpose of the meeting, but testified that "we would know the purpose, however" (R. 304). Gorby also admitted that a few days later he telephoned to one of the conciliators and stated that he would not meet with either the conciliators or the Union committee (R. 305). The conciliator, who had previously informed the Union that Gorby had promised to negotiate (R. 143), now told it that respondent's president had changed his mind (R. 75, 143-144).⁴

**B. AT THE TIME OF RESPONDENT'S REFUSAL TO BARGAIN
THE UNION WAS THE AUTHORIZED REPRESENTATIVE
OF A MAJORITY OF THE EMPLOYEES**

If the strikers remained employees within the meaning of the Act, it is undisputed that at the time of respondent's refusal to meet the Union it

⁴ Respondent's position is further emphasized by the fact that when on September 20 and on October 11 the Union wrote to respondent asking for meetings to settle the strike, respondent entirely ignored the communications (Pet. Exs. 5, 6; R. 76-77, 306).

represented a majority of respondent's employees.⁴ On the other hand, if the strikers were not employees within the meaning of the Act at that time, as the court below held (R. 421), respondent concededly had no obligation under the Act to bargain with the Union. Respondent and the court below rely upon two factors which are alleged to have caused the strike to result in a termination of the employment relationship: that the strike occurred prior to the effective date of the Act, and that the strike was in breach of a contract between respondent and the Union. It is far from clear upon the record that the contract was in fact breached by the employees, as we shall show below, pp. 38-39. In any event, neither factor, we submit, has the effect which respondent seeks to attribute to it.

1. The strikers were employees under the Act on July 23, 1935, although the strike commenced prior to the effective date of the Act

By Section 2 (3) of the Act, *infra*, p. 42, it is provided that, when used in the Act:

⁴ Prior to the strike there were some 500 production employees at the plant (R. 89). At the beginning of the strike 485 of the employees belonged to the Union and all answered the strike call (R. 173, 175, 177). The only evidence that other employees had been given jobs prior to July 23 is that 50 strikebreakers entered the plant under armed protection on July 19 (R. 69-71). Counting these new men as employees, it is apparent that the Union still represented a substantial majority if the strikers are also considered to be employees. There is no contention to the contrary.

The term "employee" shall include * * * any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, * * *.

There can be no doubt, here, that the cessation of work—the strike—was "in connection with" a "labor dispute", and that it was "current" on July 23, 1935.^{*} No more is required. Indeed, the court below had stated, earlier in its opinion, that "ordinarily the status of employer-employee exists, although the strike occurred before the passage of the National Labor Relations Act and continued after its passage" (R. 420). Two other Circuit Courts of Appeals, with whose decisions the court did not indicate disagreement, had previously specifically so held. *Jeffery-De Witt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, No. 907, May 23, 1938.

The *Jeffery-De Witt* and *Carlisle Lumber Co.* cases are clearly correct. The language of the Act is plain and unqualified. Even at common law, it

* That the labor dispute was "current" on July 23, 1935, is attested by the facts that the first attempt to resume operations was on July 19, 1935; and that respondent did not have a full force of employees until the middle of September 1935 (R. 69-71, 238-239, 241-242).

is well settled that the employment relation continues to subsist during a strike. *Michaelson v. United States*, 291 Fed. 940, 942 (C. C. A. 7th), reversed on other grounds, 266 U. S. 42; *Iron Moulders' Union v. Allis-Chalmers Co.*, 166 Fed. 45, 52 (C. C. A. 7th); *Dail-Overland Co. v. Willys-Overland Co.*, 263 Fed. 171, 187, aff'd, 274 Fed. 56, 65 (C. C. A. 6th); *Fryns v. Fair Lawn Fur Dressing Co.*, 114 N. J. Eq. 462; *State v. Personett*, 114 Kan. 680; *Uden v. Schaeffer*, 110 Wash. 391; *Greenfield v. Central Labor Council*, 10 $\frac{1}{2}$ Ore. 236. This common law rule was expressly reaffirmed in the *Jeffery-De Witt* and *Carlisle Lumber Co.* decisions. At the time when the Act became effective, therefore, respondent had employees and the Act applied to the existing employment relation.

2. *The strikers were employees under the Act on July 23, 1935, whether or not they had gone on strike in breach of the contract between respondent and the Union*

It is not denied that the strikers in this case ceased work in connection with a strike. They must, therefore, be comprehended within the statutory definition of "employee" given in Section 2 (3), *supra*, p. ¹⁷ 32, unless a strike called in breach of a contract is not a "labor dispute" within the meaning of that section. That term, however, is further defined in language which leaves no doubt of its all-inclusive character. Section 2 (9), *infra*, p. 42, defines the term "labor dispute," as used in the Act, as—

any controversy concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, * * *.

To hold otherwise is simply to limit the content of the phrase "labor dispute" by the justification of the position of the parties. A decision by this Court subsequent to the decision of the court below has indicated plainly that that may not be done. *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 344.⁷

Nor is such a position contrary to the basic purposes of the Act, as respondent urges. On the contrary, the exception proposed by respondent would frustrate in important measure the purposes which Congress intended to achieve. The Act guarantees certain rights to employees, not as ends in themselves, but in order to promote the solution of industrial controversies through collective bargaining rather than through conflict which burdens the nation's commerce (Section 1). If a strike in

⁷ There is no question in this case as to the employer's power to terminate the employment relation by *discharge* on the ground that the strikers breached their contract. The record is bare of proof that respondent took any action inconsistent with continued existence of the employment relation either before or after the strike began. Indeed, by public advertisement and individual solicitation, respondent repeatedly sought to induce the strikers to return to work (Res. Ex. 17, *infra*, pp. 74-75; R. 98-99, 101, 155-156, 161-164, 170-171, 326-330, 338-339).

technical breach of contract terminates the employment relation and excuses the employer from all obligation under the Act, he is left free to engage in practices which this Court has recognized as "prolific causes of strife" and of consequent burdens to commerce. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 42. Further, the effects of a strike during which or by which the breach of contract occurred are prolonged and intensified by exempting the employer from all obligation to negotiate for settlement.

**C. NO IMPASSE EXISTED ON JULY 23, 1935, WHICH
WOULD RENDER FURTHER NEGOTIATION FUTILE**

Finally, respondent contends that its refusal to bargain collectively with the Union did not violate Section 8 (5) for the reason that further negotiation would have been futile. The contention is based upon the assertion that the only matter in issue was that of a closed shop, and that on that matter each side was adamant. The contention was not accepted by the court below (R. 422), and is plainly not supported by the record. The closed shop question was at all times a minor issue completely subordinated to the basic issues in dispute.

The question of a closed shop, although it had been mentioned, was certainly at most a minor issue at all times prior to the strike, and was not an issue at all in the negotiations whose breakdown directly caused the Union to call the strike. Just

prior to the execution of the agreement of July 14, 1934, a member of the Union's Scale Committee said that she would not work with a "scab," but the Committee promptly disclaimed the sentiment and decided "not to discuss or make any remarks of that kind" (R. 187). After the agreement was executed, four meetings were had without mention of the subject (R. 120-122, 188-191). Then, at a meeting on November 26, 1934, the Committee, after discussing other issues, stated that it "would like to have" a closed shop, but withdrew the request upon respondent's prompt and vehement objection (R. 199-201, 297-298, 309-310). Gorby, president of respondent, admitted that the matters discussed at this meeting could not be considered demands by the Union upon respondent (R. 200-201). This was the last mention of the issue between the parties until March 17, 1935, although frequent meetings were held during the interim.

The subject was completely out of the picture on January 4, 1935, when the other matters with respect to which the Union had been attempting to negotiate with respondent were specifically formulated in the eight proposals submitted to respondent by the Union on that date. In that formulation the Union proposed that it be recognized as the collective bargaining representative of all respondent's employees; that bad workmanship be corrected without additional cost to respondent, but that the employees be exempted from responsibility for certain types of defects; that the Union inves-

tigate complaints of laxity lodged against employees and cooperate in enforcing respondent's rules; that respondent agree to lay off any member of the Union suspended therefrom; and that minimum wages be increased 5 cents per hour at the end of 90 days if unrest had been eliminated and production losses reduced to a minimum at that time (Resp. Ex. 1, *infra*, pp. 65-66; R. 78, 130, 203). A closed shop was not mentioned.

Respondent did not reply to the Committee (R. 59, 131), but sent a circular letter to the employees individually on January 21 in which it refused to recognize the Union as sole bargaining agent, stated that the enforcement of respondent's rules and investigation of laxity were exclusively concerns of the management, refused to lay off suspended Union members, and rejected the suggested minimum wage increase (Pet. Ex. 1, *infra*, pp 44-49; R. 58, 131, 204, 311-312). On February 5, the Union asked that the January 4 proposals and respondent's answers thereto be submitted to arbitration under Section 10 of the July 14, 1934, agreement, *supra*, p. 4 (Resp. Ex. 14, *infra*, p. 73; R. 204). Three days later respondent sent another circular to the employees, informing them that its lawyers had stated that the Union committee was "acting against the contract when they request that their proposal be submitted to arbitration—under the contract their proposal cannot be taken to arbitration" (Pet. Ex. 3, *infra*, pp. 52-54; R. 207).

On the same day respondent wrote to the Union expressing its view that the January 4 proposals were not arbitrable and reaffirming its prior outright rejection (Pet. Ex. 10, *infra*, pp. 55-56). The Union promptly replied, requesting respondent to deal with the Committee and not with the employees individually and stating that "if this action is taken again this body will consider such action as discrimination * * *" (Res. Ex. 15, *infra*, pp. 73-74; R. 208). Respondent nevertheless addressed a further circular letter to the individual employees on February 19 stating that the issue underlying its entire dispute with the Union was that of wage increases (Pet. Ex. 13, *infra*, pp. 57-63; R. 208). In this letter respondent also launched a bitter attack upon the Committee. On March 5 the Union again protested against respondent's repeated direct communications with the employees (R. 135-136, 209-210, 315). The Committee also made a further effort to obtain some modification of respondent's unequivocal and total rejection of the January 4 proposals. On March 11 the proposals were again presented to respondent by the Committee. Respondent replied that its prior answers were final, and accused the Union of causing "trouble and unrest" in the plant (R. 152, 211-212, 315-316).

On March 17 respondent received from the Union a resolution which it had adopted at a meeting held the previous day (Pet. Ex. 2, *infra*, pp. 50-52; R. 61, 213). The resolution summarized the

differences between respondent and the Union, and leaves no doubt as to the basic matters in dispute. It recited that the Union represented a large majority of the employees, and had attempted to bargain collectively and to comply with the July 14 agreement, but that petitioner had violated that agreement by refusing to arbitrate the Union's proposals, and by failing to comply with other provisions.* It accused respondent of bad faith in carrying on negotiations relating to the January 4 proposals, and of attempting to injure the morale of the Union members by attacking the Scale Committee in its circular of February 19. Compare *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, No. 970, May 23, 1938. It pointed out that the Union had waited more than three months for adjustment of its January 4 proposals while respondent had exerted every effort to destroy it. It was resolved, therefore, that since "peace and harmony cannot exist under the present condition, owing to the unfair practices of the Company" the Union members would not work with anyone eligible for Union membership who did not show a willingness to join

* Section 9 of the July 14 agreement (R. 16-17) provided that "any employee required to report for duty at the beginning of a shift shall receive a minimum of two hours' pay." At meetings with respondent on February 7 and March 5 the Committee tried, unsuccessfully, to obtain such pay for employees who had reported but had been prevented from working due to failure of power (R. 205-206, 210-211, 312-315).

by March 23, 1935 (Pet. Ex. 2, *infra*, pp. 50-52). The strike began on March 23 (R. 64, 216).

The strike resolution was, it is true, in terms conditioned upon a closed shop demand. The grievances set out in the resolution of March 17, however, show plainly that the closed shop was regarded simply as a remedy by which respondent's attempts to undermine the Union could be thwarted, and its other grievances brought to a full and honest collective bargaining. The financial secretary of the Union specifically testified that the closed shop issue did not cause the strike (R. 82-84). Respondent's unqualified rejection of the January 4 proposals, and its refusal to submit them to arbitration, brought home to the Union members the realization that there was no way of attaining the goal^{*} of a wage increase by peaceful means. This precipitated the strike. That the closed shop was asked in the resolution does not, therefore, indicate that what was in essence a wage dispute, as respondent itself stated in its circular of February 19 (Pet. Ex. 13, *infra*, pp. 57-63), could not have been settled as a wage dispute. Respondent does not and cannot contend that an impasse had

* The Union's primary aim was to obtain a wage increase for its members. Its requests for an increase were met with respondent's plea that unrest in the plant, with resultant spoilage of work, made any increase infeasible (see, e. g., R. 199-200, 212, 297-298). The Union's January 4 demands were designed to reduce waste and thus obviate respondent's objection to the small increase provided in the last paragraph of the proposals.

been reached at any time on the question of wages. Negotiations on that issue and on the subsidiary questions of respondent's breach of the contract and attacks upon the Union might well have avoided or terminated the dispute. There was no indication that the Union, by insisting upon a closed shop, would thwart a settlement satisfactory to it on the other issues.

Respondent also contends, however, that even if no impasse had been reached prior to the strike, an irreconcilable conflict developed on June 11, 1935, during the strike, by reason of the Union's demand for a closed shop at that time. The record makes it clear, however, that the Union took no inflexible stand, and that the failure of the conference to settle the strike cannot be traced to the Union's position on that matter. The closed shop question was undoubtedly discussed (R. 245-246, 300-301), but it is plain that the failure of the meeting is largely attributable to respondent's position that it would take all the strikers back without discrimination "but without union recognition or agreement" (R. 88, 301-302, 66, 140; Pet. Ex. 14, *infra*, pp. 63-65; Resp. Ex. 17, *infra*, pp. 74-75). The Union replied that "we couldn't countenance such a proposal as that" (R. 88). There was never even an opportunity for the Union to manifest unwillingness to yield on the closed-shop issue, since respondent's terms for a settlement, which were wholly unrelated to the closed-shop issue and challenged the very existence of the

Union, immediately eliminated all possibility of an agreement. But any impasse on this issue, as distinguished from the closed shop issue, was necessarily resolved on July 5, when the Act became effective. Thereafter respondent could not properly insist upon non-recognition of the Union as a term of settlement, and the way was opened to negotiations on other issues upon which neither party had taken an inflexible stand.

In any event, whatever may have been the situation on or before June 11, it cannot excuse respondent's refusal to bargain on July 23, six weeks later. Conditions had markedly changed. The plant was reopening (R. 238, 69-71, 142, 221), martial law had been declared and picketing forbidden (R. 72, 112, 217, 235), and respondent had struck at the morale of the strikers by going over the heads of the Union Committee and soliciting individual members to return to work (R. 98-99, 155-156, 161-164, 170-171, 326-330, 338-339). The fact that the Union approached respondent through Department of Labor conciliators, whose sole purpose on the scene was to effect a settlement, demonstrated its conciliatory intention and gave every reason to expect that negotiation would yield a settlement by compromise, as the Board found (R. 390).¹⁰ A

¹⁰ Illustrative of the manner in which a union may abandon former demands is the fact that on October 28, 1935, the Union sent Max Schafer, vice president of the Central Labor Union of Vigo County, to ask respondent to reinstate the striking employees "on the same terms and conditions as existed previous to the strike" (R. 168, 305-306)..

similar situation was considered by the Circuit Court of Appeals for the Fourth Circuit in *Jeffery-De Witt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134, certiorari denied, 302 U. S. 731. There negotiations between the company and its striking employees had reached a plain impasse on June 20, 1935. On July 15, conciliators from the United States and the West Virginia Departments of Labor offered their services as mediators. The company's refusal to reopen negotiations was held by the Board to violate Section 8 (5) of the Act. In affirming the Board's order, the Circuit Court of Appeals rejected the company's contention that its action was not an unfair labor practice because of the earlier stalemate in negotiations (91 F. (2d) at 139):

* * * The answer to this is that nearly a month of "cooling time" had elapsed since the negotiations of June 15th to 20th, the status of the controversy had undergone considerable change as a result of the operation of the plant, the striking employees after nearly a month of idleness were doubtless willing to make concessions to compromise the matters in difference, and conciliators had arrived upon the scene for the purpose of trying to secure an adjustment.

President Gorby replied that he was unwilling to discharge those who "had come to work in his plant after it had been strike-bound" and that "there would be no agreement with any union" (R. 168-169, 305-306).

II

UPON THE FINDING THAT RESPONDENT HAD VIOLATED SECTION 8 (5) AND (1), THE CEASE AND DESIST PORTIONS OF THE BOARD'S ORDER WERE REQUIRED BY THE ACT, AND SHOULD HAVE BEEN ENFORCED

Respondent urges, alternatively, that whether or not the Act had been violated, an asserted breach by the employees of the contract of July 14, 1934, barred the enforcement of the Board's order. This contention was fully sustained by the court below, and the order of the Board was set aside on this ground (R. 421-423). Although the court did not distinguish between the cease and desist and the affirmative provisions of the order, they can be more easily discussed separately. Accordingly, we will postpone the discussion of the affirmative provisions to Point III, *infra*. Here, we will show that so far as the order requires respondent to cease and desist from the unfair labor practices in which it had been engaged, it was not only authorized, but required, by the Act.

The text of the statute makes it plain that upon a finding by the Board that an employer has committed an unfair labor practice, the Board must issue a cease and desist order. Section 10 (c) of the Act (*infra*, p. 43) provides, without qualification, that upon such a finding the Board "shall issue" an order requiring the employer to cease and desist from such practice. Cf. *National Labor*

Relations Board v. Pennsylvania Greyhound Lines, Inc., 303 U. S. 261, 265. The definitions of unfair labor practices in Section 8 are also unqualified.

The court below did not deny that the Board was authorized to issue the cease and desist provisions of the order. It denied enforcement upon the assumption that a proceeding for the enforcement of an order of the Board is equivalent to a suit in equity by the employees against their employer, and that by reason of their breach of contract, the employees were "estopped" to seek enforcement of the order (R. 421, 422) and were not "entitled to invoke the aid of a court of equity" (R. 423). In other words, enforcement was denied upon considerations irrelevant either to the existence of the unfair labor practices or to the power of the Board to require their cessation.

The short answer, of course, is that an enforcement proceeding under the Act is a statutory one, not a suit in equity by those individuals who may benefit through the enforcement of the order. Cf. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 48. The Board is not a mere nominal complainant on behalf of the employees; it is the real complainant. The statute is in the truest sense a public statute; the Board as complainant represents the public. Its function is to obtain compliance with a public statute. *Agwilines, Inc. v. National Labor Relations Board*, 87 F. (2d) 146 (C. C. A. 5th). In this capacity the Board certainly should not be "estopped" or

charged with "unclean hands" by reason of breach of contract on the part of the Union or the employees involved.

The contention which is now urged by respondent has been passed upon by both the Second and Ninth Circuit Courts of Appeals, and has been rejected by both. *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, No. 970, October Term, 1937; *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, No. 907, October Term, 1937. In the *Carlisle Lumber Co.* case, the court stated (94 F. (2d) at p. 146) :

Respondent contends that the proceeding before us is an equitable proceeding; that the union's picketing resulted in violence, as the Board found, which was a violation of the laws of Washington, and therefore enforcement should be denied for the reason that the union has not come into the court with clean hands. It is not the union, but the Board, which is asking enforcement.

In the *Remington Rand* case, the Second Circuit stated (94 F. (2d) at p. 872) :

There remains only the defence raised by the respondent that the union has disqualifi ed itself by its own misconduct from appealing to the Board; a carry over from the doctrine of equity that the court will not intervene in favor of one who has been

guilty of wrongful conduct in the transaction in question. This defence was overruled in *National Labor Relations Board v. Carlisle Lumber Co., supra*, 94 F. (2d) 139, and we agree, although our reasons go beyond the procedural peculiarity that the Board is the petitioner. * * * the conduct of a union, like that of an employer, not only during the negotiations when there are any, but before there are, may be relevant in ascertaining whether the proposal to confer is genuine, or only part of the tactics of the fight. Nothing else can be material; though the union may have misconducted itself, it has a locus poenitentiae; if it offers in good faith to treat, the employer may not refuse because of its past sins. * * *

Aside from the reasons expressed in those opinions, which, we submit, are equally applicable here, it is plain that the contention is contrary to the whole purpose of the Act. Cease and desist orders look to the future, and are designed to prevent recurrence of conduct found by Congress and recognized by this Court to be "prolific causes of strife" which burden interstate commerce. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 42. This purpose is thwarted if employers who have violated the law may continue to do so because their employees have been guilty of a breach of contract. It would be indeed strange if this wholly extraneous factor should allow an employer to indulge in conduct which has been specifically declared by Congress to

be contrary to public policy, and apt to result in burdens and obstructions to interstate commerce.

The Act was not intended to cover the entire field of labor relations. *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, *supra*, at 46. Employer and employee alike are left to those remedies against breaches of contract and other unlawful acts which are afforded at common law or under other statutes. The employer was not deprived of these remedies; nor was the existence of facts which would enable him to invoke them intended to be a ground for permitting his own violation of the Act to continue unchecked. As the reports of its committees reveal, Congress realized that if the Board were compelled to make findings upon recriminations and counter-recriminations of this sort it would be overwhelmed and its energies diverted from preventing and correcting the unfair labor practices set out in Section 8—the sources of the evils to be corrected.¹¹ The court below has read

¹¹ Compare the following statement by the Committee on Education and Labor of the Senate (Sen. Rep. No. 573, 74th Cong., 1st Sess.) in rejecting the proposal that the Board have power to prevent burdens to commerce occasioned by employee action (pp. 16-17) :

"Nor can the committee sanction the suggestion that the bill should prohibit fraud or violence by employees or labor unions. The bill is not a mere police court measure. The remedies against such acts in the State and Federal courts and by the invocation of local police authorities are now adequate, as arrests and labor injunctions in industrial disputes throughout the country will attest. * * * In addition, the procedure set up in this bill is not nearly so

back into the statute what was deliberately omitted because it would frustrate what Congress intended to achieve.

III

THE ORDER OF THE BOARD REQUIRING THE REINSTATEMENT OF THE STRIKING EMPLOYEES WAS NEITHER ARBITRARY NOR UNREASONABLE, AND SHOULD HAVE BEEN ENFORCED

As we have already pointed out, *supra*, p. 29, the court below, without distinguishing between the cease and desist and the affirmative relief portions of the order of the Board, set both aside because it found that the employees had breached the contract of July 14, 1934. In Point II, *supra*, we dealt with the effect of the alleged breach on the validity and enforcement of the cease and desist portions of the order. We come now to the failure of the court to enforce those provisions of the order by which the Board attempted to restore the status disrupted by respondent's unfair labor practices.

Section 10 (c), *infra*, p. 43, provides that the Board, upon finding that unfair labor practices

well suited as is existing law to the prevention of such fraud and violence. * * * The only results of introducing proposals of this sort into the bill, in the opinion of the committee, would be to overwhelm the Board in every case with countercharges and recriminations that would prevent it from doing the task that needs to be done."

This section of the report was quoted with approval by the Committee on Labor of the House of Representatives. H. Rept. 1147, 74th Cong., 1st Sess., p. 16.

have occurred, shall issue an order requiring the employer:

* * * to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.

Under that provision, Circuit Courts of Appeals have uniformly sustained orders of the Board directing an employer, who has prevented realization of a probable settlement by refusing to bargain with his employees on strike, to restore the strikers to positions of employment, discharging, if necessary, employees first hired after the date of the unfair labor practices.¹² *Black Diamond S. S. Corp. v. National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2d), certiorari denied, No. 872, Oct. Term, 1937; *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2d), certiorari denied, No. 970, Oct. Term, 1937; *Jeffery De Witt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731; *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, No.

¹² This relief is entirely consistent with the employer's right, pointed out in *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, to counteract economic pressure of the strikers by hiring new workers in their stead prior to the commission of unfair labor practices. In the case at bar, respondent is required only to discharge, if necessary to make room for the strikers, those employees who were first hired after the Act had been violated.

907, Oct. Term, 1937; *National Labor Relations Board v. Biles Coleman Lumber Co.*, 98 F. (2d) 18 (C. C. A. 9th). In the *Remington Rand* and *Carlisle Lumber Co.* cases, various illegal acts by the employees were presented as defenses to the petitions for enforcement of the Board's order but were rejected by the Circuit Courts of Appeals (*supra*, pp. 31-32).¹²

There can be no doubt, therefore, that the affirmative relief ordered in the present case is within the scope of Section 10 (c). Nor can there be any doubt that it is for the Board to determine, in its "judgment and discretion" whether "upon the basis of the findings, * * * the case is one requiring an affirmative order, and in choosing the particular affirmative relief to be ordered." *Na-*

¹² In a supplemental opinion rendered in the *Carlisle* case on October 15, 1938, the Ninth Circuit expressly refused to follow the decision of the court below in the present case on this point. Judge Haney stated:

"Respondent again contends that reinstatement and back pay should not be awarded because the men in question committed acts of violence, and do not, therefore, have clean hands. We answered that contention in the prior decision by the statement that 'It is not the union, but the Board, which is asking enforcement'. (94 F. (2d) 138, 146.) What I have said regarding the purpose of the act is also applicable here, and requires the conclusion that the penalty is not controlled by equity. See also *National Labor Relations Board v. Remington Rand, Inc.* (C C A 2), 94 F. (2d) 862, 872; Senate Committee on Education and Labor Report No. 595, 74th Congress, p. 16. I am unable to follow a contrary holding in *National Labor Relations Board v. Columbian Enameling and Stamping Co.* (C C A 7), 96 F. (2d) 948, 953."

tional Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., 303 U. S. 261, 265. Determination whether employee misconduct is sufficiently serious to permit the effects of unfair labor practices to continue is within its "judgment and discretion."¹⁴ Unless plainly unreasonable, the conclusion reached by the Board will not be disturbed by the courts. Certainly the court below could not properly substitute its judgment for that of the Board with respect to the appropriateness of the relief, as it seems to have done. Cf. *Swayne & Hoyt, Ltd. v. United States*, 300 U. S. 297, 303-304; *United States Navigation Co. v. Cunard S. S. Co.*, 284 U. S. 474, 485; *Manufacturers Railway Co. v. United States*, 246 U. S. 457, 482.

Upon the basis of the findings in the present case, we submit that the affirmative relief ordered was essential to carrying out the policies of the Act. The Board found (R. 391) that it would be futile to require respondent to cease and desist from its refusal to bargain with its employees unless the employees were restored to their position of employment in the plant. Consequently, it concluded (R. 391):

Under these circumstances we must restore, as far as possible, the situation prior to the violation of the Act, in order that the process

¹⁴ The Board has, on occasion, held that employee misconduct warranted withholding the normal reinstatement remedy. *Kentucky Firebrick Co.*, 3 N. L. R. B. 455, enforcement granted 99 F. (2d) 89 (C. C. A. 6th); *Republic Steel Corp.*, 9 N. L. R. B., No. 33, decided October 18, 1938, at 175.

of collective bargaining, which was interrupted, may be continued.

A contrary conclusion would simply allow the effects of the unfair labor practices to continue—a plain frustration of the policies of the Act.

The breach of contract which is alleged to have been committed by the employees forms no basis for holding that this conclusion of the Board is unreasonable or improper. A brief review of the facts shows clearly that the employees' misconduct consisted, at most, of a technical breach of contract which they, in turn, believed that respondent itself was breaching.

Contrary to respondent's first contention which was accepted by the court below, the employees did not violate Section 10 of the contract, which provided that disputes "arising under this contract" should be arbitrated, and that "there shall be no stoppage of work by either party to this contract pending decision by the committee of arbitration" (R. 17). The agreement, in other words, forbade strikes *during* arbitration. However, as we have pointed out, *supra*, pp. 22-23, respondent refused to allow the proposals submitted by the Union on January 4, 1935, to be submitted to arbitration. Whether respondent was correct is immaterial; at least, no arbitration was had, and Section 10 never came into operation. The court below, in deciding that the strike was in violation of Section 19 (R. 420, 423) did not explain how the provision ever became operative, and completely

ignored the detailed facts found by the Board (R. 381, 387) which made it patently inapplicable.

Respondent also urges that the strike occurred because respondent refused to grant the Union a closed shop, whereas by Section 3 of the contract of July 14 (R. 16), both parties had been committed to an open shop, and that the strike thereby breached that section. We have shown above, pp. 21-27, that the closed shop issue was a minor one at all times, and that the crisis which resulted in the strike was due to other issues, among which were claims by the Union that respondent had failed to abide by the contract. Respondent's contention, therefore, resolves itself into the highly technical one that, although the employees could strike to obtain the demands which were at the basis of the dispute, the strike became a breach of the contract because of the advancement of the proposal for a closed shop—a proposal never seriously urged, and never a part of the strike in the sense that its advancement constituted a bar to settlement.

Under what could, at most, therefore, be a technical breach of contract, it was clearly not an abuse of discretion for the Board to decide that correction of what the court below called respondent's "open defiant, flouting of the law of the land" (R. 422) was more important to the achievement of the purposes of the Act than discipline of the employees.

Finally, respondent urges that the reinstatement order will not "effectuate the policies of the Act"

because it will encourage violation of contracts on the part of employees and thus frustrate the basic purpose of the statute. The contention is without merit. The policies of the Act require that the effects of unfair labor practices be dissipated and conditions restored as nearly as possible to the status disrupted by those practices. It would clearly frustrate this end to require cessation of the practices but permit their effects to continue. As the Board properly found (R. 391) restoration of the *status quo* can be effected only by restoring the men to the positions to which they might have returned long since had respondent conformed its labor practices with the law.

Moreover, the argument is based upon a wholly erroneous concept of the Act. We have pointed out, *supra*, pp. 32-34, that the employer has various familiar remedies against breaches of contract, and it cannot be presumed that resort to those remedies is not equally effective to prevent employee actions which might promote industrial strife as enforcement of this Act is to discourage actions of the same type by employers. The philosophy of respondent's contention is that, if one set of sanctions has failed, the other and more important set should not be applied in the hope that their withholding will in the future reinforce the first set in other cases. The effects of the unfair labor practices forbidden by the Congress cannot be permitted to continue on any such plea. The purpose of the Na-

tional Labor Relations Act is to safeguard commerce by guaranteeing to employees protection of the rights conferred by this statute. A purpose of this significance cannot be thwarted upon a mistaken conception that the equities are pointed in favor of an employer who feels that injury by the misconduct of his employees justifies him in ignoring the law.

CONCLUSION

For the reasons above set forth it is respectfully submitted that the judgment of the court below should be reversed with directions to enforce the order of the Board.

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NOVEMBER 1938.

APPENDIX A

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp. III, Title 29, Sec. 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include
* * * any individual whose work has
ceased as a consequence of, or in connection
with, any current labor dispute or because
of any unfair labor practice, and who has
not obtained any other regular and substan-
tially equivalent employment, * * *

(9) The term "labor dispute" includes
any controversy concerning terms, tenure
or conditions of employment, or concerning
the association or representation of persons
in negotiating, fixing, maintaining, chang-
ing, or seeking to arrange terms or condi-
tions of employment, * * *

SEC. 7. Employees shall have the right to
self-organization, to form, join, or assist
labor organizations, to bargain collectively
through representatives of their own choos-
ing, and to engage in concerted activities,
for the purpose of collective bargaining or
other mutual aid or protection.

SEC. 8. It shall be an unfair labor prac-
tice for an employer—

(1) To interfere with, restrain, or coerce
employees in the exercise of the rights guar-
anteed in section 7.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

SEC. 10:

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

APPENDIX B

PETITIONER'S EXHIBIT No. 1

COLUMBIAN ENAMELING
& STAMPING CO., INC.,

Terre Haute, Indiana, January 21, 1935.

To All Factory Employees:

The Scale Committee, representing those of our employees who are members of Union No. 19694, has submitted a proposal to the Company which I am listing below under the heading of "Proposal," followed in each case by the "Company Answer."

Proposal.—The Union agrees to cooperate with the Company in mutual aid for efficiency.

Company Answer.—We, who are employees of the Company are obligated to work with the Company and with each other. Our jobs depend upon our ability to work together efficiently regardless of sex, age, race, or religion. None of us is required as a condition of employment to join or to refrain from joining any particular church, lodge, society, labor union, or other organization. Our interests are mutual and the security of our employment rests upon the successful and uninterrupted operation of our business.

Proposal.—The foreman must report anyone found lax in their duties to the committee. Committee to investigate the complaint and assist the management in correcting the complaint.

Company Answer.—The Company will not agree to this proposal because it is convinced that only

through regularly delegated supervisors, such as foremen, superintendents, and other executives can the factory be managed in a successful and businesslike manner. Our mutual interests are based on the operation of this business on the principle which best serves the needs of our customers and others concerned in the manufacture, distribution, sale, and servicing of our products. Any of us found lax in our duties will be discharged by foremen, superintendents, executive officers, directors, or stockholders, depending upon who our immediate superiors are. All of us working for the Company are paid a wage for a day's work, and we are required to do that day's work. We all know, or should know our duties, and we should all work to the point where efficiency and good conduct prevail, rendering complaints unnecessary.

Proposal.—Company agrees to cooperate with the Union by posting Notice to the effect that Local Union No. 19694 represents a majority of the employees and will be considered the bargaining committee for all the employees of the plant.

Company answer.—The Company will not agree to this proposal, in the interest and the welfare and the rights of both its employees and itself. Employees in this plant have always had the right to bargain individually or collectively, and the Company does not intend to alter or sacrifice the rights of any employee to bargain as he sees fit. Any employee or group of employees is welcome to discuss factory matters with the management of this Company at any time that they may wish to do so.

Proposal.—In case of bad workmanship discovered before the final process of current operation,

ware shall be returned to person responsible, if possible, for correction. Correction to be made without any additional cost—but in no case shall any employee be penalized for the bad work of another.

Employees shall not be responsible for:

Over or under fire.

Fish scales.

Bad Enamel.

Dirty or Greasy ware.

Air pocket separation.

Acid soda deposits.

Company answer.—This procedure is entirely in accordance with the ideas of the Company and is in force at the present time, and, so far as my knowledge goes, has been in force for some time past. Bad workmanship wherever done, or by whomsoever done arises from carelessness, which causes waste, thereby increasing production costs, which does not help any of us. Every one of us should hold ourselves directly responsible to cut costs to the lowest possible point. All of us should feel obligated to reduce costs on whatever operation or job we may be working, because it is only by reducing costs that the Company can make selling prices which will bring an increased volume of business into this Company.

Proposal.—Committees or members shall not discuss grievances during working hours unless called on by the foreman.

Company answer.—This is in accordance with our general factory rules and as such should be observed strictly. We are expected to conduct ourselves in a businesslike way while we are in the plant, and the volume or quality of work performed by us should not be interfered with, during work-

ing hours, by discussions unrelated to Company business, such as personal affairs, grievances, etc. We all should put out an honest day's work and not let any outside influence affect our sincere and honest desire to give the Company efficient, workman-like service.

Proposal.—The committee agrees to cooperate with the Company in enforcing all shop rules agreed to by the committee and Company.

Company answer.—The enforcement of Company rules is the duty of those holding supervisory positions. The making of Company rules is the management's responsibility. We employees must observe Company rules. It is not the purpose to make any unreasonable rules, but we do expect everyone to observe those which we now have or make in the future.

Proposal.—In order to bring about more efficient workmanship and better cooperation, the Company agrees to lay off any member of the Union who becomes suspended.

Company answer.—The company will not agree to lay off anyone on the grounds that they are suspended from the union because such suspension is a matter of union business and is not Company business. Some time ago the Scale Committee, representing those of our employees who are members of Union No. 19694, requested that the Company agree to make this a closed shop. The Company will not operate as a closed shop because the best interests of the Company, its employees, and its customers, dealers and distributors are served by the principles of an open shop. We do not believe in discrimination against any employee on account of

sex, age, race, or religion. None of us is required as a condition of employment to join or to refrain from joining any particular church, lodge, society, labor union, or other organization. The Company must continue to reserve the right to operate and conduct its business under conditions which provide for the selection, retention, and advancement of each employee solely upon the basis of his or her individual merit, experience, and efficiency.

Proposal.—If at the end of ninety days, the present unrest has been eliminated and the production loss has been reduced to a normal minimum, the Company agrees to make the minimum wage rate forty cents for female and forty-five cents for male.

Company answer.—The Company can not agree to this proposal because the ability to pay any increase in wages depends on much more than the elimination of unrest and the reduction of production losses or spoiled work to a normal amount. The ability to pay increased compensation depends on the amount of business which we can get, the prices which our customers will pay for the ware, and factory cost. There are 24 factories in our industry, of which 17 are as active as Columbian. That means that we have 17 major competitors and 6 minor ones, and we have to fight "tooth and toe nail" against the whole lot in order to get any business into this plant at all. If we are to continue to get a satisfactory volume of business, each of us must make every possible effort to improve the quality of ware and service to the customer, and also effect every possible saving that any one of us can think of. On the point of increased compensation, if and when the Company makes a satisfac-

tory profit showing, it is the management's desire and intention to increase compensation proportionately without anyone in the factory having to ask for an increase, and, furthermore, such an increase will be paid to everyone in the factory.

I am giving each one of you a copy of this memorandum so that you may be informed of the union's requests and the reply that the Company made to the Scale Committee representing those of our employees who are members of Union No. 19694.

Our prospects of getting a somewhat greater volume of business during a part of the year 1935 look fairly good. This is due not only to slightly improved business conditions throughout the whole country, and the introduction of a few new finishes which you have probably already noticed, that is, red ware with white lining, white ware with red bead, and ivory ware with red bead, but, also, because the Company has recently acquired the services of a merchandiser and Sales Manager in Johnnie W. Boston, who was appointed Vice President in Charge of Sales. Mr. Boston's experience covers many years of merchandising housewares. We confidently hope that in time—and you all know that such a job takes time—he will bring into this factory an increased volume of production.

WERNER H. GRABBE,
General Manager.

PETITIONER'S EXHIBIT No. 2

ENAMELING & STAMPING MILL EMPLOYEES UNION NO.
19694

TERRE HAUTE, INDIANA

610 N. 14TH ST.,

Terre Haute, Ind., March 17, 1935.

Mr. WERNER GRABBE,

Vice-Pres., Columbian Enam.

& Stamp. Co., Inc..

Terre Haute, Ind.

Dear Sir: Enclosed is a copy of the resolution passed and adopted by Local No. 19694 at a regular meeting, Saturday, March 16, 1935.

WHEREAS, Local Union #19694 representing a large majority of the productive workers of the Columbian Stamping and Enameling Company entered into an agreement July 14th, 1934 with the Columbian Stamping and Enameling Company, underwritten by the Regional Labor Board for the purpose of terminating a suspension of operation in effect at that time; and

WHEREAS, it has been the desire of this Local Union to comply with every provision of the contract and bring about the often repeated suggestion of the agencies of our Government, that of collective bargaining; and

WHEREAS, The Company has refused to comply with the provisions of the agreement;

(1) By refusing to comply with Section 9, which says in part; "Any employee required to report for duty at the beginning of his shift shall receive a minimum of two hours' pay."

(2) The Company has refused to comply with Section 10 by refusing to arbitrate proposals submitted to them by this Local Union in compliance with Section 5; and

WHEREAS, The Company has violated not only the provisions of the contract but have violated every principle of collective bargaining as well as every principle of common decency;

(1) They violated every principle of collective bargaining by refusing to answer those proposals to which they could find no sane objections.

(2) On February 19th, 1935 they issued a circular letter to all employees questioning the honesty, loyalty and intelligence of the committee elected by this Local Union to negotiate for you, and in the same letter referred to "agitators," no doubt referring to the Representative of the American Federation of Labor, who has assisted us only at our request; and

WHEREAS, Through this unjust and unwise criticism of our chosen representatives, doubt, misunderstanding, dissatisfaction and confusion exists in the plant and among the workers to the detriment of all concerned; and

WHEREAS, The Union has complied with every provisions of the contract:

(1) By entering into the spirit of the agreement by desiring to co-operate in every way possible to bring about a better understanding among the employees and the Management.

(2) By complying with Section 5 of the agreement when ordered by the Local Union to ask for certain changes in the agreement, by sending the required thirty days notice of desired changes, addressed to the Company under date of October 23rd, 1934.

(3) By waiting more than three months for a satisfactory adjustment of our proposals, while the Company used their talent, Corporation lawyers and resources to discourage our membership, belittle our duly elected committee and attempt to tear down the morale of our members; therefore, be it

RESOLVED, That the members of Federal Labor Union #19694, affiliated with the American Federation of Labor believe that peace and harmony can not exist under the present conditions, owing to the unfair practices of the Company, we do hereby refuse to continue to work with any one eligible for membership in our Union who does not show a willingness to become a member on or before March 23rd, 1935; and be it further

RESOLVED, That a copy of this resolution be sent to the Regional Labor Board at Indianapolis, a copy to the Management and a copy to the President of the American Federation of Labor.

Sincerely,

Cor. Sec'y.

PETITIONER'S EXHIBIT No. 3

COLUMBIAN ENAMELING & STAMPING CO., INC.
TERRE HAUTE, INDIANA

FEBRUARY 8, 1935.

To All Factory Employees:

On January 21, 1935, I sent to all of you the Scale Committee's proposal, together with the Company answer.

On February 5, 1935, the Scale Committee informed me that it was their wish that the proposal be taken to arbitration as provided for in Para-

graph 2 of Section 10 of the July 14, 1934, Indianapolis agreement, which paragraph reads as follows:

"In any case in which a satisfactory settlement of *a dispute arising under this contract* cannot be reached, such dispute shall be referred to a committee of arbitration composed of two persons selected by the Management, two persons selected by the Union, and fifth person to be selected by these four, who shall reach a decision which shall be final and binding upon both parties to this contract. There shall be no stoppage of work by either party to this contract pending decision by the Committee of Arbitration."

Yesterday I informed the Scale Committee that their proposal is not subject to the arbitration provision of the agreement. Each of you can see, by reading the underscored [*italicized*] words of Section 10 quoted above, that only disputes over subjects specifically mentioned in the agreement may be submitted to arbitration. By referring to the Scale Committee's proposal in my letter of January 21, 1935, you can see that what the Scale Committee is asking for is not contained in the agreement.

The agreement does not say that the Scale Committee shall help make Factory rules, investigate laxness, or that the Company shall discharge any employee suspended from the Union, which would be a deliberate act of discrimination, etc., etc. Read the copy of the Indianapolis agreement posted on the Bulletin Board and compare it with the Scale Committee's proposal, and you will see for yourself that the above is true—not a proposal

they make is included under the Indianapolis agreement.

Our Corporation lawyers advise us that "The Scale Committee is acting against the contract when they request that their proposal be submitted to arbitration—under the contract the proposal can not be taken to arbitration."

WERNER H. GRABBE,
Vice President & General Manager

PETITIONER'S EXHIBIT NO. 9

COLUMBIAN ENAMELING & STAMPING CO.

Manufacturers of Enameled and Stainless Steel Wares

Sales Offices: New York and Chicago.

Factory and General Offices
Terre Haute, Indiana.

October 30th, 1934.

ENAMELING & STAMPING MILL EMPLOYEES,
Union No. 19694, Terre Haute, Indiana.

Attention Mrs. Lois Conder, Secretary.

My dear Mrs. Conder: We are in receipt of your communication of October 22nd, in which you inform us of interpretation of your organization's resolution adopted September 28, to-wit: "On and after thirty days from date all members of Union No. 19694 shall be in good standing with said Union No. 19694 under penalty of loss of Union No. 19694 association rights".

And also of your communication of October 22nd, in which you notify us of a request that you will the Indianapolis agreement of July 14 modified.

To this end, please be informed that we shall be glad to meet with your designated officials on Fr

day, November 23, 1934, in order to discuss the matter.

Yours very truly,

COLUMBIAN ENAMELING &
STAMPING CO., INC.

(Sgd.) WERNER H. GRABBE,
General Manager.

WHG: AE.

Mrs. Lois Conder, Secretary,
610 North 14th Street,
Terre Haute, Indiana.

PETITIONER'S EXHIBIT No. 10

COLUMBIAN ENAMELING & STAMPING CO.

*Manufacturers of Enameled and Stainless Steel
Wares*

Sales offices: New York and Chicago.

Factory and general offices: Terre Haute, Indiana.

Mrs. LOIS CONDER, FEBRUARY 8, 1935.

*Corresponding Secretary,
Enameling & Stamping Mill*

Employees Union No. 19694,

*610 North 14th Street,
Terre Haute, Indiana.*

My Dear Mrs. Conder: Receipt is acknowledged herewith of your letter of February 5, in which you inform me that it is the wish of your Union that your proposal of January 4, 1935, be taken to arbitration as provided for by Section 10 of the July 14, 1934, Indianapolis agreement.

Yesterday I informed the Scale Committee that its proposal is not subject to the arbitration provision of the agreement. You can readily see, by reading Paragraph 2 of Section 10 of the agree-

ment, that only disputes over subjects mentioned in the agreement may be submitted to arbitration. None of the proposals made is included under the Indianapolis agreement; hence, the proposal is not subject to arbitration. Our Corporation lawyers advise us that, "The Scale Committee is acting against the contract when they request that their proposal be submitted to arbitration—under the contract their proposal cannot be taken to arbitration." It is for this reason that I informed the Scale Committee yesterday as I did. Undoubtedly you, yourself, are aware of the impossibility of considering the proposal.

In my memorandum of January 21, 1935, I gave full and complete answer to each proposal, and therein the Company's position is most clearly stated. I do not believe that any of you will go out of your way to deliberately make trouble for the Company, which has, for so many years, given you employment.

If you wish to discuss the matter further, I shall be glad to meet with the members of the Scale Committee at any time subject to our mutual convenience.

Yours very truly,

COLUMBIAN ENAMELING &
STAMPING CO., INC.

(Signed) WARNER H. GRABBE,
Vice President & General Manager.

WHG: AE.

P. S.—I am attaching hereto, for you information, a printed copy of a memorandum, dated February 8, 1935, which is being mailed to all factory employees. This printed copy has reference to the matter of arbitration.

W. H. G.

PETITIONER'S EXHIBIT No. 13

[Petitioner's exhibit No. 12 is the same as petitioner's exhibit No. 13 except that the addressee is Mrs. Lois Conder, Corresponding Secretary of the Union]

COLUMBIAN ENAMELING & STAMPING CO., INC.
TERRE HAUTE, INDIANA

February 19, 1935.

To All Factory Employees:

Recently we received a letter from the Enameling & Stamping Mill Employees Union No. 19694, dated February 9, 1935, and signed by Lois Conder, Corresponding Secretary, which states:

1. "It was moved unanimously by all members of Union 19694 present at a special meeting that the company deal directly with the scale committee of aforesaid union in matters concerning said union and not deal individually through the mail."

2. "As the union has a personnel of 476, we know exactly what is taking place."

3. "We do not want the information given to foremen and non-members. This is only to comply with section 7A (collective bargaining) of the National Recovery Act, prompted by our President."

4. "If this action is taken again this body will consider such action as discrimination and deal with it as such, regardless."

The management of the Columbia Enameling & Stamping Co., Inc., makes this reply to the above letter, to-wit:

(1) Misunderstanding and disorganization, which often causes deserving, efficient and loyal employees of a company to lose their jobs through

agitation and strikes which they do not instigate and with which they are not in sympathy, arises generally from individual misinformation and misinterpretation of situations affecting employees.

We feel that we have an obligation to keep all of our employees informed alike, whether or not they are members of Union 19694, and we shall continue to keep them equally informed, with respect to any and all plant negotiations, policies, conditions, and developments that concern their labor relations with this Company, either individually or collectively.

President Roosevelt, in his adjustment of the automobile labor situation, said (March 25, 1934):

“The government makes it clear that it favors no particular union or particular form of employee organization or representation. The government's only duty is to secure absolute and uninfluenced freedom of choice without coercion, restraint or intimidation from any source.”

“Industry's obligations are clearly set forth and its responsibilities are established. Certainly it is not too much to expect employees to observe the same ethical and moral responsibilities, for only in this way can industry and its workers go forward with a united front in their assault on depression and gain for both the desired benefits of continually better times.”

The words “from any source” were used advisedly by the President, who meant that not even agitators should influence, intimidate or coerce unorganized workers to join some particular organization involuntarily and against their will when, if left alone, they prefer by their own free choice to remain free of any group affiliation, and

to bargain independently and individually with their employer, which they have a lawful right to do as free born American Citizens.

(2) This Company has no knowledge of the extent of union membership among our employees, represented by Union 19694, hence it is not only beside the point, but is overstretaching the point to allude to the figures of alleged membership. The membership may be 70 or it may be 700. That point is not pertinent nor consequential, for certainly when each employee receives our letters, why wouldn't the union committee and members be expected to "know exactly what takes place." That is what we want them to know.

Since our letters to employees have been in the nature of factual bulletins for the information of all of them, concerning the labor situation and policies prevailing in this plant, there has been no so-called "dealing through the mail" or "discrimination." There is nothing to conceal and the purpose of our letters has been to openly advise all employees fairly and equally in order that those belonging to the union, as well as those who do not, will "know exactly what takes place."

(3) Why should not the foremen and non-members of the union receive the same information that is open to its members? They have direct shop relationships and each should know the facts so that there will be no discrimination among them, and so that all employees may be given opportunity to freely and openly and intelligently discuss these matters among themselves without fear, favor, intimidation, coercion, or ignorance of the real facts.

We shall continue this practice, and will also see that our keymen, superintendents, foremen,

personnel supervisors, etc. are likewise kept informed, as well as the other factory employees, with respect to labor relations, shop rules, and regulations, production schedules, and related matters of company policy and management procedure.

(4) Since our several previous open letters, like this one, were sent to each factory employee purely as a Company statement pertaining to our plant policies of management, employment and production, we do not admit that there has been any discrimination as charged. This being our attitude in the situation, we do not understand the meaning of the implied threat to "deal with it as such, regardless."

The majority of the employees in this factory are sensible and hard working people, desirous of turning out a good day's work, and desirous of letting the management of the Company run the business. The Scale Committee during the past few months seems to have made up its mind that it wants to manage not only the Company, but all the employees working for it. This is an impossible situation, as every thinking man and woman in this organization can readily appreciate. To manage a factory as large as ours requires a knowledge that goes far beyond what any individual in the factory, or any group in the factory knows or could learn for many years to come. Before the Scale Committee or any other group of employees could manage this factory, they would have to have a very intimate daily knowledge of business conditions throughout the country, they would have to know banking and credit, accounting, costs, law, mechanical and chemical engineering, details of customers' businesses, competitive situation in the

industry, and in other competitive industries, like aluminum, glassware, crockery, etc., and any number of other things too numerous to mention in this letter.

If you will sit down and study the problem for only ten minutes, you will be astonished at the number of things that have to be known to manage a business. This factory could not run, nor could it exist without competent management. Wouldn't it be sensible to let competent management do those things that it is qualified to do? I am willing and available to discuss any factory problem with any one of you at any time that you may wish to see me. At any time that you have any grievance or complaint to make, having reference to Company affairs, I am not only willing and ready to listen to that complaint, but also to correct it if it is possible to do so, but please bear in mind that the Company can not, and will not turn the management of Company affairs over to any group of employees, whoever they may be. It is, perhaps, unfortunate that in business today, as in the past, and as it will be in the future, some of us have to work and some of us have to manage (and management is hard work), but that is the situation, and you can't get around it. I can at least say this much, that those of us who have jobs are darn lucky. It has always seemed to me to be a pleasure to have a job and be able to work. Any employee can make his job a pleasant one by showing a proper spirit in a wholehearted way. Any employee can make his job an unpleasant one by acting in an arbitrary and trouble making way.

What we all want is more pay. You want it, and I want it, and some of us want it badly. When

the Scale Committee, in its recent proposals that you are familiar with (because I sent them to you in a letter) asks to help make Company rules, investigate laxness, discharge any employee suspended from the union, etc., they are asking for something that is beside the point. The real point is higher wages. I repeat that what we all want is higher wages, and that, my friends, is something that none of us can get at this time. In order to pay higher wages, we have got to get more business into this plant. We have got to reduce costs, and we have got to get higher selling prices for our Enameled Ware. Competition makes our selling prices for us, and competition is not willing to raise prices; in fact, last week some of our competitors decided to make another price cut of 10%, which Columbian has to meet in order to get some business into this plant, so we are worse off than we were before. In fact, the Company is in a position where if competition does not raise prices, or where if we are compelled to meet continuing price cutting competition, it is going to be most difficult for this Company to even maintain present wage levels. You know that our business has fallen off recently. That is because our competitors have much lower prices than Columbian.

I am as anxious to raise wages as any of you are to get higher wages, and as I have told you before, higher wages will be paid when the Company is able to pay them, and you will get the increase without any of you asking for it. Making a demand for increased wages is not going to get it for you, regardless of the way in which the demand might be made. Coercion, restraint or intimidation from any source won't get you higher wages. The Com-

pany simply can not pay increased wages at this time because it cannot afford to do so. The big majority of you are sensible thinking men and women and know that now and have known it.

It seems to me that Columbian's problems must be solved in a spirit of helpful cooperation, and that any activity which tends to inject misunderstandings and to confuse issues between employees and the Company, or disorganizes plant operations is harmful to its employees and harmful to the Company. For the reasons given above, we are mailing a copy of this letter to all factory employees.

Sincerely yours,

WERNER H. GRABBE,
Vice President and General Manager.

PETITIONER'S EXHIBIT NO. 14

COLUMBIAN ENAMELING & STAMPING CO.

*Manufacturers of Enamelled and Stainless Steel
Wares*

Sales offices: New York and Chicago.

Factory and general offices: Terre Haute, Indiana.

May 10, 1935.

Honorable Samuel E. Beecher,
Mayor of Terre Haute,
Terre Haute, Indiana.

Dear Sir: With reference to your letter of May 7, 1935, inviting us to meet with you and union representatives to seek a mutually satisfactory understanding, we wish to thank you for your very good and sincere intentions.

The strike, now existing about two months, was called for the purpose of forcing the Company to discharge non-union employees.

Such action would violate all principles of justice and legality. Any person has the moral and legal right to refuse to join a union, and can not morally or legally be deprived of the right to work because of such refusal. It is the duty of the law enforcing bodies, and the Courts of the City, County, and State, to enforce this right against intimidation, threats, and violence. The Company therefore absolutely refuses to make union membership a consideration in hiring, retention, or dismissal of employees.

Under the circumstances, a meeting of union and Company representatives would be entirely useless.

Any group of former employees, as individuals, but not as union representatives, may meet with the Company officials any time they wish.

This Company, from its inception, has operated as an open shop continuously for 33 years, maintaining good conditions and paying good wages (always as high as competition permitted). No union could ever have secured more advantageous conditions or wages. And no union can now secure advantages the Company will not voluntarily grant of its own accord. Union domination has now kept former employees off the payroll for two months and would continue to do so.

This Company will not now or ever operate under closed shop or union domination, but will always accord employees the best possible wages and conditions.

The strike is being maintained by the few through intimidation, coercion, threats, violence, and fear, which deprive the many of means of livelihood.

The Company exceedingly regrets the hardships caused by this ill advised strike and is doing what it can to alleviate suffering among former employees.

If the union calls off the strike, the factory will be reopened promptly without discrimination or reduction in wages, but only as open shop without union recognition or agreement.

Respectfully yours,

COLUMBIAN ENAMELING & STAMPING CO., INC.

CBG : AE

RESPONDENT'S EXHIBIT No. 1

The Union agrees to cooperate with the Company in mutual aid for efficiency.

The foreman must report any one found lax in their duties to the committee. Committee to investigate the complaint and assist the management in correcting the complaint.

Company agrees to cooperate with the Union by posting Notice to the effect that Local Union #19694 represents a majority of the employees and will be considered the bargaining committee for all the employees of the plant.

In case of bad workmanship discovered before the final process of current operation—ware shall be returned to person responsible, if possible, for correction. Correction to be made without any additional cost—but in no case shall any employee be penalized for the bad work of another.

Employees shall not be responsible for—

- Over or under fire.
- Fish scales.
- Bad Enamel.
- Dirty or greasy ware.
- Air pocket separation.
- Acid soda deposits.

Committees or members shall not discuss grievances during working hours unless called on by the foreman.

The committee agrees to cooperate with the Company in enforcing all shop rules agreed to by the committee and Company.

In order to bring about more efficient workmanship and better cooperation the Company agrees to lay off any member of the union who becomes suspended.

If at the end of ninety days the present unrest has been eliminated and the production loss has been reduced to a normal minimum, the Company agrees to make the minimum wage rate forty cents for female and forty-five cents for male.

RESPONDENT'S EXHIBIT NO. 5

SEPTEMBER 18, 1934.

To Employees Belonging to Union No. 19694:

At the request of a Committee representing your organization, the Company agreed to institute the check-off system for the collection of dues payable to your organization under the following conditions:

1. Any member who may wish such a deduction made from his pay must sign a form (Pay Deduction Authorization) for each pay period.

2. Because of the clerical work involved, no authorization will be accepted by the Company unless properly signed and returned to the gatekeeper's office at least one week prior to the end of the pay period.

3. The organization to reimburse the Company for the cost of additional records and clerical work involved.

The Committee objected to the signing of "Pay Deduction Authorizations" for each pay period, requesting that the Company accept one signature for dues deductions for the period from date to July 14, 1935.

The Company informed the Committee that such a procedure is impractical and illegal. THE LAW PROVIDES THAT ASSIGNMENT OF WAGES FOR MORE THAN THIRTY DAYS IN ADVANCE IS ILLEGAL.

COLUMBIAN ENAMELING & STAMPING Co., Inc.

(Sgd.) WERNER H. GRABBE,
General Manager.

RESPONDENT'S EXHIBIT No. 6

ENAMELING & STAMPING MILL EMPLOYEES

UNION NO. 19694

TERRE HAUTE, INDIANA

October 1, 1934.

COLUMBIAN ENAMELING & STAMPING Co., Inc.

Mr. WILLIAM GORBY, Gen. Supt.

DEAR SIR: You are hereby informed as follows:

The members of Union #19694, in regular session, resolve: All members of Union #19694, on and after thirty days from date, shall be in good

financial standing with said Union #19694, under penalty of dis-association.

Signed,

ELsie PAYTON,
OTIS A. COX,
M. G. HEUER,
MERLE BADDERS,
RUTH BADDERS,
C. H. PAYTON,
ED. G. MORIN.

RESPONDENT'S EXHIBIT No. 7

OCTOBER 4, 1934.
ENAMELING & STAMPING MILL EMPLOYEES,
Union No. 19694, Terre Haute, Indiana.

Attention Otis A. Cox, Financial Secretary

Gentlemen: We have received your notification of October 1, 1934, in which you inform us that members of your organization adopted the following resolution:

"Resolved: All members of Union #19694, on and after thirty days from date, shall be in good financial standing with said Union #19694, under penalty of dis-association."

In a friendly spirit of cooperation, we ask that you inform us in writing, at your early convenience, as to the intent and meaning of your communication.

Do you intend it as a notification to the Company that you desire to terminate or modify the July 14, 1934, Indianapolis agreement, in accordance with Paragraph (5) thereof—

"When either party to this agreement desires to terminate or modify this agreement, he shall give written notice to the other party at least thirty days in advance of such termination."

And regarding the words of the resolution "under penalty of dis-association," do you mean that members of your organization whose dues are paid up will refuse to work with those whose dues are not paid up at the end of the thirty days, October 31, 1934?

We are sure that you appreciate that our wish to obtain from you a clear understanding of the subject matter is actuated entirely by a desire to avoid possible misunderstanding.

Yours very truly,

COLUMBIAN ENAMELING & STAMPING CO., INC.,

General Manager.

WEG: AE

cc to Elsie Payton

M. G. Heuer

Merle Badders

Ed. G. Morin

Ruth Badders

C. H. Payton

RESPONDENT'S EXHIBIT No. 8

COLUMBIAN ENAMELING & STAMPING CO.

Terre Haute, Indiana,

October 4, 1934.

To All Employees:

Because competitive prices are lower than our present cost, we faced very meager employment for at least the next several months. We therefore announced on October 1 to all our customers lower prices to meet this competition, in the hope of an

increased volume that would reduce the loss from lower selling prices. This action is in the nature of an experiment, the continuance of which will depend upon results. We therefore ask that everyone gives full cooperation in serving our mutual source of revenue (THE CUSTOMERS) promptly and with satisfactory merchandise. Also, that each individual make every effort to keep the cost of our product as low as possible. The Company's problem is your problem; towit, low cost and satisfactory merchandise—otherwise, losses for the Company and lack of employment for the employees. The Company is doing its full share by offering its product at less than cost. No sacrifice is being asked of the employees. The employees' share is faithful, conscientious work.

A feeling of unrest is not conducive to good work. To those of you who are not quite sure in your own minds regarding the Company's attitude on matters recently discussed in the factory, I have the following to say:

1. Whether employees belong to an organization or whether they do not belong to an organization makes no difference in the Company's attitude towards any employee. All employees will be treated equally. The Company's attitude is neutral and its actions impartial.

2. A check-off system for those Employees who belong to Union #19694, such as is requested by the Scale Committee of that organization, is illegal, and the Company will not knowingly violate a statute. The law provides that assignment of wages for more than thirty days in advance is illegal.

Let's do everything possible to get this organization running smoothly and pleasantly in the interest of yourself and the Company.

Yours for more business.

COLUMBIAN ENAMELING
 & STAMPING CO., INC.,
 WERNER H. GRABBE,
General Manager.

RESPONDENT'S EXHIBIT No. 9

ENAMELING & STAMPING MILL EMPLOYEES UNION NO.
 19694, TERRE HAUTE, INDIANA

TERRE HAUTE, IND.

October 22, 1934.

COLUMBIAN ENAMELING & STAMPING CO., INC.,
 Mr. Werner Grabbe, Gen. Mgr.

Dear Sir: It is the decision of Union #19694 that the resolution of that body adopted September 28 and effective October 1 be interpreted as follows:

On and after thirty days from date all members of Union #19694 shall be in good standing with said Union #19694 under penalty of loss of Union #19694 association rights.

Fraternally,

(Sgd.) ELSIE PAYTON

OTIS COX

M. G. HEUER *Chairman*

RUTH BADDERS

MERLE BADDERS

L. G. BROWN

C. H. PAYTON

E. G. MORIN

[SEAL]

RESPONDENT'S EXHIBIT NO. 11

ENAMELING & STAMPING MILL EMPLOYEES UNION
NO. 19694

TERRE HAUTE, INDIANA

TERRE HAUTE, IND.,

October 23, 1934

COLUMBIAN ENAMELING & STAMPING CO., INC.

Mr. WERNER GRABBE, Gen. Mgr.

DEAR SIR: Under the terms of our present agreement, as provided in Section 5, you are hereby notified that it is the request of Union #19694 that said agreement be modified. This letter is to serve as the thirty day notice agreed upon in our contract with the company.

Fraternally,

(Sgd.) ELSIE PAYTON,

OTIS COX,

M. G. HEUER, *Chairman*

RUTH BADDERS,

MERLE BADDERS,

L. G. BROWN,

C. H. PAYTON,

E. G. MORIN.

[SEAL]

RESPONDENT'S EXHIBIT No. 14

ENAMELING & STAMPING MILL EMPLOYEES UNION NO.
19694, TERRE HAUTE, INDIANA

610 N. 14th St.,
Terre Haute, Ind., Feb. 5, 1935.

Mr. WERNER GRABBE,

Gen. Mgr., Columbian Enam. & Stamp. Co.

Dear Sir: It is the wish of Union 19694, representing a majority of your employees, that the proposal of January 4 be taken to arbitration, as provided for by section 10 of our agreement.

We respectfully ask that you meet with our representatives on or before Monday, Feb. 11.

Sincerely,

(Signed) Lois CONDER,
Cor. Sec'y.

RESPONDENT'S EXHIBIT No. 15

ENAMELING & STAMPING MILL EMPLOYEES UNION
NO. 19694, TERRE HAUTE, INDIANA

610 N. 14th St.,
Terre Haute, Ind., February 9, 1935.

Mr. WERNER GRABBE,

*Vice-Pres. & Gen. Mgr.,
Columbian Enameling*

& Stamping Co., Inc.,

Terre Haute, Ind.

Dear Sir: It was moved unanimously by all members of Union 19694 present at a special meeting that the company deal directly with the scale committee of aforesaid union in matters concerning said union and not deal individually through the

mail. As the union has a personnel of 476, we know exactly what is taking place. We do not want the information given to foremen and non-members. This is only to comply with section 7A (collective bargaining) of the National Recovery Act, prompted by our President.

If this action is taken again this body will consider such action as discrimination and deal with it as such, regardless.

Sincerely,

(Signed) LOIS CONDER,
Cor. Sec'y.

RESPONDENT'S EXHIBIT NO. 17

Terre Haute Star, Friday, June 7, 1935, page 11

ANNOUNCEMENT!

COLUMBIAN ENAMELING & STAMPING CO., INC.

The Company exceedingly regrets any hardships or community business losses caused by the strike existing since March 23, 1935. The Company has done what it could financially to alleviate acute suffering among its former employees.

The Company thanks those disinterested and generous individuals and groups who have so kindly offered their time for meetings intended to terminate the strike.

Union employes called the strike to force the Company to discharge nonunion employes—in other words, to adopt the closed shop.

The Company is willing to operate its plant, using former employes, without discrimination

against union members and without change in wages, but only as an open shop without union recognition or agreement. The above are the conditions under which the Company has operated continuously for 33 years to the general satisfaction of the employees. If the plant cannot be operated under these conditions, it will be closed indefinitely.

The plant will be reopened when the former employes advise the Company that they are ready to go back to work under above conditions.

COLUMBIAN ENAMELING & STAMPING CO., INC.

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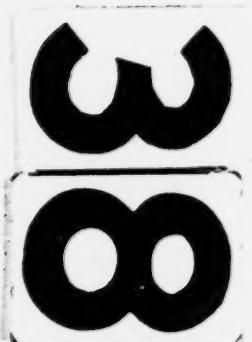
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1938

NO. 229.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

COLUMBIAN ENAMELING & STAMPING
COMPANY, INC., Respondent.

BRIEF OF COLUMBIAN ENAMELING & STAMPING
COMPANY, INC., RESPONDENT, IN OPPOSI-
TION TO PETITION OF NATIONAL LABOR
RELATIONS BOARD FOR A WRIT OF CERTIO-
RARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH
CIRCUIT.

EARL F. REED,
OTTO A. JABUREK,
Attorneys for Respondent.

2812 Grant Building,
Pittsburgh, Pa.

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IN THE
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OCTOBER TERM, 1938

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**COLUMBIAN ENAMELING & STAMPING
COMPANY, INC., Respondent.**

**BRIEF OF COLUMBIAN ENAMELING & STAMPING
COMPANY, INC., RESPONDENT, IN OPPOSI-
TION TO PETITION OF NATIONAL LABOR
RELATIONS BOARD FOR A WRIT OF CERTIO-
RARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH
CIRCUIT.**

SUMMARY OF ARGUMENT.

The respondent, Columbian Enameling & Stamping Company, Inc., opposes the granting of a writ of certiorari in this case. The decision of the Court below (R. 415-425, reported at 96 F. (2d) 948) is unquestionably sound. As will appear hereinafter, the facts upon which that decision is based are not comparable with the facts in any other case that has arisen under the National Labor Relations Act. Here a fair collective bargaining agreement, expressly providing against ces-

sation of work for the period thereof, viz., one year, was violated by the calling of a strike, months before the enactment of the Labor Act. The refusal to bargain charged against the respondent as having occurred after the Labor Act became effective, obviously did not cause the strike, as is the usual state of facts in this type of case. Furthermore, there is no question of great public importance involved herein, nor is there any conflict in the decision of the Court below with the decision of any other Circuit Court of Appeals, nor is there any important question of federal law involved which should be settled by this Court, nor is the decision below in conflict with applicable decisions of this Court, nor are there any other special or important reasons for the granting of the writ.

The petitioner has set forth in its statement commencing on page 4 of its petition and brief certain of the facts involved in the case. This statement in so far as it goes is consistent with the record, but there has been omitted therefrom other facts which are of importance in the present determination and to which reference will be made in the course of our argument.

ARGUMENT.

I.

The Decision of the Court Below Is Consistent With the National Labor Relations Act.

The first reason cited by the petitioner for the granting of a writ of certiorari herein is that the Court below decided an important question of law contrary to the plain language of the National Labor Relations Act. Such a contention is wholly unfounded. There can be no doubt as to the real basis for the decision of the Court below. The Court was very careful to conclude its opinion with a statement that could not be misinterpreted, viz: (R. 423)

"The holding in this case is, of course, restricted to the particular facts in this case which are:

(a) The withdrawal of the employees before the National Labor Act was enacted.

(b) The employees had a valid short time wage agreement during which they agreed not to strike but to submit differences growing out of the agreement to arbitration.

(c) The employees ceased working in the face of their wage agreement with its anti-strike provision and at a time when there was no Federal Labor Act in force.

"It is needless to add that we are not required to pass upon, nor do we pass upon a case where any one or all of said relevant factors are absent."

It is true, as stated by the petitioner on page 13 of its brief, that the Court below cited certain cases in this Court and in the Circuit Court of Appeals for the Ninth Circuit to the effect that ordinarily the status of

employment exists although a strike occurs before the passage of the National Labor Relations Act and continues after its passage. It is not true, however, that no emphasis was placed by the Court on the fact that under the circumstances the employment relationship ceased prior to the enactment of the Labor Act. We think that under the language of the conclusion of the decision quoted above, there can be no doubt that the Court below had the two ideas in conjunction, viz., that the strike occurred prior to the Act and that it was a strike in direct violation of an agreement not to strike. Obviously this position narrows the issue, as the decision by its very terms would not apply to a case in which a strike occurred subsequent to the enactment of the Labor Act although in violation of a contract not to strike. It is hardly possible that cases now arising before the National Labor Relations Board, after more than three years of the existence of the Act, would involve precisely this situation, viz., a strike prior to the Act in derogation of a collective bargaining agreement also made prior to the Act. We think this factor alone provides sufficient justification for denying the present writ, the basis for the decision of the Circuit Court below being too narrow to have any wide-spread application upon situations now arising.

In connection with the conclusion of the Court below that the employment relationship ceased as a result of the strike in violation of a wage agreement containing an anti-strike provision, we think that the opinion of the Court might well have been buttressed by additional facts established by the undisputed testimony. The Court below relied for its finding upon the provision in the collective bargaining agreement between respondent and the Union representing respondent's employees respecting the arbitration of disputes (R. 421), and

have no quarrel with its conclusion therefrom. In addition, however, the contract of July 14, 1934, referred to in the record and herein as the "Indianapolis Agreement", contained a provision to the following effect: (R. 16)

"3. No employees have been or will be discriminated against because of his or her membership in or non-membership in, or affiliation with or non-affiliation with any union or labor organization."

This provision preserves what is known as the open-shop principle and, having been agreed to by the Union involved for the period of the agreement, was not subject to abrogation by the Union in that period. It appears, however, that the strike which occurred on March 23, 1935 (over three months prior to the enactment of the Labor Act), was because the respondent refused to accede to the closed-shop principle in derogation of the agreement. The record is replete with testimony indicating conclusively that the only real dispute between the Union and the respondent was on the basis of the closed shop. Time after time commencing with the negotiation of the Indianapolis Agreement and throughout the period of the agreement preceding the strike, the question of the closed shop was raised. The agreement was negotiated in July 1934, and at one of the meetings during the conduct of the negotiations one of the Union committee stated that neither she nor any other member of the Union would work with persons who were not members of the Union (R. 187). Despite this statement, the Union executed the Indianapolis Agreement, containing paragraph 3, quoted above. In October 1934, a resolution to the effect that members of the Union must be in good financial standing under penalty of loss of membership rights, was passed by the

Argument.

Union and communicated to the respondent (Respondent's Exhibit 6 and 9). In a meeting of November 26, 1934, the President of the Indiana State Federation of Labor, acting for the Union, stated that "The Union doesn't want very much and you can grant it if you wish very readily. What the Union wants is a closed shop." (R. 199)

The Union proposals of January 4, 1935 (Respondent's Exhibit 1) included a proposal that respondent lay off any employee who was suspended from the Union. On March 11, 1935, this proposal was renewed. On March 17, the following resolution was passed and communicated to the respondent:

"RESOLVED that the members of Federal Labor Union #19694, affiliated with the American Federation of Labor, believe that peace and harmony cannot exist under the present conditions owing to the unfair practices of the Company. We do hereby refuse to continue to work with anyone eligible for membership in our union who does not show willingness to become a member on or before March 23, 1935; * * *" (Petitioner's Exhibit 2)

The respondent refused to countenance the closed shop and on March 23, in accordance with the foregoing resolution, the strike was called (R. 64, 216). Therefore, in addition to the arbitration clause of the agreement with its anti-strike provision upon which the Court below placed chief emphasis, there was also a provision preserving the open-shop principle which was violated by the Union in its resolution of March 17 and its strike of March 23.

We argued to the Court below and we argue seriously to this Court that the National Labor Relations Act, by its statement of purposes and by all of its terms

and provisions, is for the purpose of encouraging collective bargaining between employer and employee, thereby promoting industrial peace and the free flow of commerce between the States. When a collective bargaining agreement whose provisions are fair, as the Court below found with respect to the Indianapolis Agreement (R. 421, 422), a finding which the petitioner does not controvert, has been entered into between employer and employee, it is important, not only from the standpoint of employment relationships generally but also from the standpoint of the law of contracts, that such agreements be respected, not only by the employer but also by the employee. There is no provision, express or implied, in the National Labor Relations Act that seeks to strike down fair collective bargaining agreements and, in fact, the petitioner herein would or should be the last agency to make any such assertion, as presumably the primary object of its existence is to foster and encourage fair collective bargaining agreements. Assuming, therefore, the situation in this case of a fair agreement directly violated by the employees, how can it be said that the refusal of the Court below to enforce the order of the Labor Board was in derogation of the National Labor Relations Act?

We argued in the Court below that there was no substantial evidence upon which to base the finding of the Board that the respondent refused a few days after July 23, 1935, to bargain collectively with its employees (R. 386). Apparently the Court below was not impressed with that argument and found that there had been a refusal to bargain and unfortunately used language which the petitioner has seized upon as of great importance to its prayer that a writ of certiorari be granted herein (Petitioner's Brief, page 12). We still insist that such a finding is not justified and not only

imputes knowledge to the respondent which it did not have, viz., that the Union had requested a meeting (R. 304), but also ignores the fact that the alleged request was made on July 23, 1935 (R. 303), the very day respondent was reopening its plant after four months of idleness (R. 238) and had its full time and attention occupied by matters of vastly more importance than a meeting to discuss the closed-shop principle.

We think it proper to point out, however, that the Court below, in stating that the respondent had violated the National Labor Relations Act, apparently overlooked the fact that such a finding is inconsistent with its major premise in the case that the employment relationship ceased to exist following the strike on March 23, 1935 (R. 421). Obviously, if that relationship was discontinued, then the respondent had no employees on July 23, 1935, to whom it owed a duty to bargain after the inception of the Labor Act, because all of them had voluntarily left their employment more than three months prior to the effective date of the Act.

We think it proper also to point out that the Court below, in making the finding of refusal to bargain on July 23, 1935, failed to consider this one instance in the light of the previous relationships between the respondent and the Union. From July 14, 1934, the date of the Indianapolis Agreement, to March 23, 1935, the date of the strike, the respondent met with representatives of the Union on at least eleven different occasions (R. 120, 188; 120, 189; 190; 122; 198; 203; 311; 205; 313; 209; 211). These were collective bargaining meetings and resulted in the adjustment of various matters (R. 201; 210). As stated above, the only real issue between the parties was that of the closed shop. The other matters upon which the Union purported to seek arbitration were simply a camouflage for the real issue of closed or

open shop, and on this issue the negotiations had reached an impasse. The respondent had resisted the closed-shop principle from the inception of negotiations on the Indianapolis Agreement; it had refused time after time to modify the open-shop provision in that agreement (R. 199; 311; 212); its position was not changed after the strike (R. 249, 250; 301) and the great damage inflicted upon it by the illegal acts of the strikers. Likewise, the Union had given no indication of receding from its demand for a closed shop and in fact renewed that demand on June 11, 1935, at a meeting with respondent called at the request of the Union to settle the strike (R. 299, 301). Under these circumstances a refusal to meet with representatives of employees is not a refusal to bargain collectively.

In *National Labor Relations Board v. Remington Rand, Inc., et al.*, 94 F. (2d) 862, the Circuit Court of Appeals for the Second Circuit used the following language:

"As we have already said, the Act does not attempt to settle industrial disputes; it leaves the parties to the resultant of their opposed economic powers; and while it does force them to treat with each other, it may be assumed to contemplate only bona fide negotiation. *Hence, it is no doubt true that it does not require further negotiation after it becomes apparent that a settlement is impossible.*" (Italics ours).

This returns us to the basis of the decision of the Court below that a strike in violation of an agreement not to strike, which occurs prior to the Labor Act, relieves the employer from the duty to bargain collectively with such former employees or their representatives. We cannot help but reiterate that the issue in this case, even assuming it was resolved improperly by the Court below, which we deny, is so narrow as not to justify the granting of such special relief as a writ of certiorari.

II.**The Decision of the Court Below Is Not in Conflict With That of Another Circuit Court of Appeals.**

The second proposition of the petitioner is to the effect that the decision of the Court below is in conflict with the decision of the Circuit Court of Appeals for the Second Circuit. This contention is utterly unfounded. In that case the refusal to bargain collectively and the discharge of a substantial number of employees for Union activity, constituting the alleged unfair labor practices, preceded the strike and the alleged misconduct of the employees. Obviously that is not the situation herein where the strike, in violation of an agreement not to strike, preceded the alleged failure to bargain collectively.

As stated by the petitioner (Brief, page 24, note 6), the employer in that case, viz., *National Labor Relations Board v. Remington Rand, Inc., et al.*, 94 F. (2d) 862, in its application to this Court for a writ of certiorari, claimed that the decision of the Second Circuit Court of Appeals was in conflict with the decision of the Court below. The writ was denied and we cannot assume, as counsel for the petitioner has assumed (Brief, page 24, note 6), that the reason for refusal was because the question of the effect of the misconduct of the employees was insubstantial. If insubstantial for the purposes of the petition by the employer in one case, it is certainly insubstantial for the purposes of a petition by the National Labor Relations Board. Again we say that the decision of the Circuit Court herein is based upon its own narrow set of facts and there is no decision in any other circuit in conflict therewith.

III.

No Question of Great Public Importance Is Involved.

The third reason of the petitioner for the granting of a writ of certiorari is that the primary question presented is of great public importance. We do not know that we can add anything to the previous discussion which so conclusively contradicts any such contention. The cases cited by the petitioner on this branch of the argument have nothing whatsoever to do with the present situation. We are not dealing with a question of simple misconduct on the part of employees which the Labor Board as an independent agency of the Government enforcing a policy statute can ignore and yet obtain relief on behalf of the alleged wrong-doers. We have here an agreement entered into prior to the National Labor Relations Act but completely consistent with the purposes of that Act; an agreement which is directly violated by one of the parties thereto. Although the language of the Circuit Court of Appeals below may be strained into an application of the "clean hands" doctrine generally, it was not so intended by the Court below, because the conclusion of the decision which we have quoted above states squarely the basis for the decision without reference to the equitable doctrine aforesaid.

IV.

The Order of the Labor Board Is Invalid Under the Decisions of This Court.

There is an additional aspect of this case which deprives it of any important or special reasons justifying the granting of a writ of certiorari. There is no dispute in the record that on June 11, 1935, all of the former employees of respondent were offered their jobs back without discrimination and without reference to their participation in the strike (R. 301). Many of them returned to work and by the second week of September 1935, the respondent had a complete force of men (R. 239), including a large number of former employees (R. 242), and has since that time carried on operations to the extent justified by the demand for its products. The order of the Board required the respondent to discharge all such employees in favor of a small coterie of disgruntled former employees who refused to return to work when work was offered. The Court below was undoubtedly impressed by the unfairness of such an order to the rights of such workers as had resumed their employment or had received the jobs of those who refused to go back to work. Especially so, in view of the long period that has elapsed since June 11, 1935, when employment was originally offered, a delay for which the Board cannot escape at least partial responsibility in failing to apply to the Court below until July 9, 1937, for enforcement of its own order of February 14, 1936.

This Court has held that such an order as the Board entered herein is invalid in that an employer is entitled to "protect and continue his business by supplying places left vacant by strikers. And he is not bound to discharge those hired to fill the places of strikers upon the election of the latter to resume their employ-

ment, in order to create places for them." *National Labor Relations Board v. Mackay Radio & Telegraph Company*, 58 S. Ct. 904, 911. The Circuit Court of Appeals for the Second Circuit has adopted the same rule (*Black Diamond Steamship Corp. v. National Labor Relations Board*, 94 F. (2d) 875). Under this decision the only relief grantable would be to place the small coterie of former employees on a preferred list of employment for the future. This involves no matter of great public importance justifying the special relief sought by petitioner.

The Court below must also have been impressed with the obvious impropriety of ordering the respondent to bargain collectively with the Union as exclusive representative of the respondent's production employees, an order made on the basis of facts existing, if at all, nearly three years ago and which now may well be entirely changed.

It is therefore respectfully submitted that there is no justification for the issuance of a writ of certiorari herein.

EARL F. REED,
OTTO A. JABUREK,
Attorneys for Respondent.

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**IN THE
Supreme Court of the United States**

OCTOBER TERM, 1938

NO. 229.

**NATIONAL LABOR RELATIONS BOARD,
Petitioner,**

v.

**COLUMBIAN ENAMELING AND STAMPING
COMPANY, INC.**

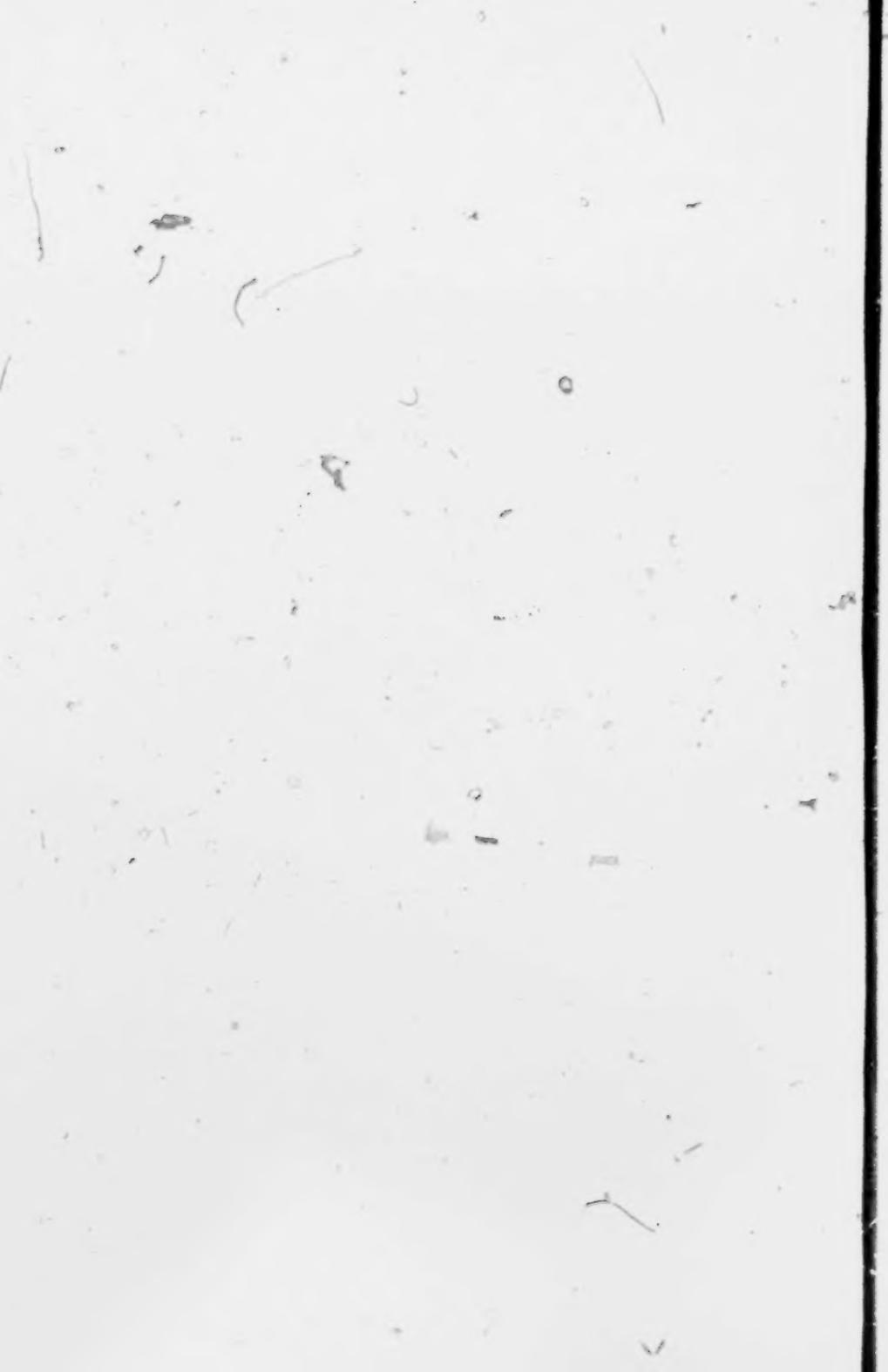
On Writ of Certiorari to the United States Circuit Court
of Appeals for the Seventh Circuit.

**BRIEF FOR COLUMBIAN ENAMELING AND
STAMPING COMPANY, INC.**

✓ **EARL F. REED,
OTTO A. JABUREK,
CHARLES M. THORP, JR.,**

Attorneys for Respondent.

2812 Grant Building,
Pittsburgh, Pa.



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IN THE
Supreme Court of the United States

OCTOBER TERM, 1938

NO. 229.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

**COLUMBIAN ENAMELING AND STAMPING
COMPANY, INC.**

On Writ of Certiorari to the United States Circuit Court
of Appeals for the Seventh Circuit.

**BRIEF FOR COLUMBIAN ENAMELING AND
STAMPING COMPANY, INC.**

OPINION BELOW.

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit (R. 415-425) is reported in 96 F. (2d) 948. The decision of the petitioner, National Labor Relations Board, appears in the record at pages 372 to 393.

JURISDICTION.

The decree of the United States Circuit Court of Appeals for the Seventh Circuit, denying the petition of the National Labor Relations Board, for enforcement of its order, was entered on April 28, 1938. The petitioner filed its Petition for Writ of Certiorari on July 28, 1938, which was granted on October 10, 1938. This Court's jurisdiction is based upon Section 240 (a) of the Judicial Code, as amended, and Section 10 (e) of the National Labor Relations Act.

STATUTE INVOLVED.

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449; 29 U. S. C. A. Section 151, *et seq.*), involved herein, will be referred to in the Argument *infra*.

QUESTIONS PRESENTED.

1. Whether the petitioner's finding that the respondent refused to bargain collectively with the representatives of the strikers on or about July 23, 1935, is justified by the record.
2. Whether the occurrence of a strike in violation of a fair collective bargaining agreement prior to the passage of the National Labor Relations Act terminated the employment status of the strikers.
3. Whether the strike in this case was in violation of the collective bargaining agreement entered into between the respondent and its employees on July 14, 1934.
4. Whether the passage of the National Labor Relations Act created any duty upon the respondent to

bargain collectively with the strikers or their representatives.

5. Whether the petitioner's order that the respondent reinstate the strikers is remedial within the petitioner's authority, or punitive and therefore outside of such authority.

6. Whether the petitioner's order of reinstatement will effectuate the policies of the Act.

STATEMENT OF THE CASE.

On March 23, 1935, the then employees of the respondent, who were members of a union, quit work in accordance with a resolution which had been communicated to the respondent on March 17, 1935, the effective portion of which was as follows:

"RESOLVED, that the members of Federal Labor Union #19694, affiliated with the American Federation of Labor, believe that peace and harmony cannot exist under the present conditions, owing to the unfair practices of the company. We do hereby refuse to continue to work with anyone eligible for membership in our Union who does not show a willingness to become a member on or before March 23, 1935; * * *" (Petitioner's Exhibit 2, petitioner's brief, pages 50-52)

the Indianapolis Agreement and Collective Bargaining Meetings Prior to the Strike.

At the time of the aforesaid strike which resulted in the closing of respondent's plant, there was in effect an agreement, hereinafter sometimes referred to as the "Indianapolis Agreement," entered into on July 14, 1934 for a period of a year, between the respondent and

Enameling & Stamping Mill Employees' Union #19694, hereinafter called the "Union," and negotiated by Dr. Earl R. Beckner, then director of the Indianapolis Regional Labor Board. The Agreement, respondent's Exhibit "A" (R. 15-18), provided for the preservation of the open-shop principle in the respondent's plant in the following language:

"(3) No employees have been or will be discriminated against because of his or her membership in or non-membership in, affiliation with or non-affiliation with any union or labor organization."

The Agreement also provided for arbitration of disputes arising thereunder and that pending arbitration of such disputes, there were to be no stoppages of work by either party. The Agreement further provided for the recognition of seniority rights; for the maintenance of specified working conditions; for notice to the other party of a desire for termination or modification of the Agreement; for the spreading of work; for a method by which a person could appeal from a dismissal he deemed to be unjust; for minimum pay to employees required to report for duty; for increased pay under certain conditions; for machinery for the handling of grievances; and for the maintenance of an eight-hour working day. In fact, as the Court below has found (R. 422), the Indianapolis Agreement was a "specific agreement, reasonable in time and in conditions and not violative of statutory law nor of public policy."

The respondent and the Union conducted their relations under the Indianapolis Agreement during the period from July 14, 1934, to March 23, 1935. During that period representatives of the respondent met with representatives of the Union in at least eleven separate collective bargaining meetings (R. 120, 188; 120, 189;

90; 122; 198; 203; 311; 205; 313; 209; 211). In most cases, these meetings resulted from a written request of the Union to the respondent (R. 197, 203, 204), to which the respondent readily assented as is shown by the frequency of the meetings. This is of importance in our later discussion of the evidence of the alleged request for a meeting on July 23, 1935. The discussions at these meetings covered a wide range of topics consisting usually of demands advanced by the Union.

One of the demands in one of the earlier meetings or collective bargaining was for the institution of the check-off system for the payment of Union dues and assessments, whereby the amounts of such items should be deducted from wage payments and paid directly by the respondent to the Union. This was a subject of discussion at four of the collective-bargaining meetings over the period from August 8, 1934 to September 21, 1934 (R. 188; 189; 190; 122).

The Indianapolis Agreement made no reference to the check-off, and for that reason alone the respondent might have refused to consider the subject. That, however, was not its attitude with respect to this or any other demand of the Union.

The respondent considered the check-off demand carefully from the standpoint of legality, administration and expense (R. 189, 191) and notified the Union of its position as influenced by those considerations. The respondent advised the Union it would institute the check-off system under certain conditions, *inter alia*, that it would have to receive pay deduction authorizations from its employees for each semi-monthly deduction (letter of September 18, 1934, Respondent's Exhibit 5, Petitioner's Brief, pages 66, 67), whereas the Union wanted one deduction authorization for the entire period of the Indianapolis Agreement (R. 190, 191). At

Statement of the Case.

the collective bargaining meeting of November 26, 1934 (R. 198), one T. N. Taylor, an organizer for the American Federation of Labor and President of the Indiana Federation of Labor (R. 196), stated that the matter of a check-off system might be forgotten by the respondent (R. 201), and accordingly it was not thereafter the subject of discussion or demand by the Union at any meeting for collective bargaining purposes.

Another matter of bargaining under the Indianapolis Agreement arose out of the demand by a few of the employees for two hours' pay for a day when the power house broke down and they were unable to work (R. 205). The respondent called the committee's attention to the statement of Dr. Beckner, made when the Indianapolis Agreement was being negotiated, that he would not include in the Agreement a provision holding the company responsible for the payment of wages to employees during periods of idleness attributable to breakdowns of machinery, on the ground that such a provision would be unfair and unjust, which it obviously would be (R. 187). No such provision was included in the Indianapolis Agreement and the respondent's refusal to pay wages to the few men concerned for the day mentioned, as well as its refusal to submit the proposal to arbitration was entirely justified as in reality the proposal was for a change in the terms of the Agreement and not for arbitration of a dispute arising thereunder. The petitioner's brief (page 24, note 8) in discussing this subject completely ignores this background upon which the respondent's action was justifiably based.

The demand most frequently discussed, and which finally led to the strike, was the Union's demand for a closed shop. This demand first appeared at the meeting at which the Indianapolis Agreement was negotiated and signed. It was in the form of a statement by at

least one of the Union committee members of refusal to work with a so-called "scab" (R. 187). This sentiment did not prevail, however, and the Indianapolis Agreement, as aforesaid, adopted the open-shop principle. The demand next appeared in October 1934 in the form of a resolution, communicated to the respondent by the Union, to the effect that members of the Union must be in good financial standing under penalty of loss of membership rights (Respondent's Exhibits 6 and 9, petitioner's brief, pages 67, 68; 71). If this resolution involved simply a matter of internal management of the Union, not calculated to affect the delinquent members' employment status, communication thereof to the respondent would have been meaningless.

In the collective bargaining meeting held on November 26, 1934, which resulted from a written request by the Union to discuss modification of the Indianapolis Agreement (Respondent's Exhibit 11, petitioner's brief, page 72), the President of the Indiana Federation of Labor who acted as the Union spokesman stated that, "The Union does not want very much and you can grant it if you wish, very readily. What the Union would like to have is a *closed shop*." (R. 199). This demand for modification and the other demand, viz., for a 20% wage increase, were refused by the respondent. At the close of the meeting the Union spokesman stated that the Union had no demands (R. 201).

The closed-shop demand reappeared, however, in the Union's proposals of January 4, 1935 (Respondent's Exhibit 1, Petitioner's Brief, pages 65, 66). The petitioner (in a footnote to page 5 of its brief) disagrees with the finding of the Court below (R. 416) that such was the fact. It is true that in form it was a proposal that the respondent should lay off employees suspended from the Union, but obviously the closed-shop was the objective

of the proposal. The respondent answered the Union's proposals of January 4, 1935 at the collective bargaining meeting on January 21, 1935, and, with reference to the lay-off of suspended members of the Union, stated that suspension was purely a Union function and that it would not undertake to discipline its employees because they were suspended by the Union (Petitioner's Exhibit 1, Petitioner's Brief, pages 44-49).

At the collective bargaining meeting of March 11, 1935 there was discussed the submission to arbitration of the Union's aforesaid proposals of January 4, 1935. The respondent again stated its position with respect to lay-off of employees suspended from membership in the Union, that question being presented by the Union spokesman and by four of the Union committee members (R. 211-212).

Petitioner's Exhibit 2, the Union resolution to refuse to work with non-Union employees (quoted *supra* at page 3), was the next communication received from the Union (R. 213) and the strike was called six days later, viz., March 23, 1935 (R. 213), *over three months before the expiration of the Indianapolis Agreement, and likewise more than three months before the National Labor Relations Act was enacted and approved.*

On the date of the strike, a conciliator of the Department of Labor called on respondent and stated that *all the Union wanted was a closed shop and that that was not an unreasonable demand.* The respondent, consistently with the Indianapolis Agreement, rejected this proposal, however, and the conciliator gave up his attempt to settle the strike (R. 383).

Over two and a half months later, viz., on June 11, 1935, the strike continuing meanwhile, the Union's written request (Petitioner's Exhibit 4) for a meeting to

discuss settlement of the strike was granted by respondent (R. 140). At this meeting a *Union representative* stated that although wages and working conditions were satisfactory, the *Union did not think it fair to its members to have a few non-Union members enjoying the alleged benefits of the Union without paying dues to the Union* (R. 301).

Despite this overwhelming testimony on the subject, the petitioner has the temerity to assert that the closed-shop was at all times, and certainly prior to the strike, a minor issue, and that wages were the basis of dispute (Petitioner's brief, pages 20, 21, 25, 39).

As we have stated, the open-shop principle was incorporated in the Indianapolis Agreement. The Union later sought modification of the Agreement to provide for the establishment of a closed shop. Failing to secure modification, it attempted to reach its end by having the respondent lay off suspended members. The respondent's refusal to accede to this demand was entirely proper as it was in contradiction of the Indianapolis Agreement. The Union's request that this proposal be submitted to arbitration was also properly refused as this could not conceivably be "a dispute arising under" the Agreement, which, by the terms of paragraph (10) (R. 17) was the condition of the submission to arbitration of disputes.

For the sake of clarity, it should be pointed out that the respondent's position with respect to the submission to arbitration of each of the Union's proposals of January 4, 1935 (See Petitioner's Exhibit No. 1, Petitioner's Brief, page 44), was that, in certain instances, the proposals were in accord with the respondent's policy, and therefore involved no dispute; and that in all other instances, the proposals were not subjects of dispute arising under the Agreement. An examination of Petition-

er's Exhibit No. 1 (Petitioner's Brief, page 44) shows the complete justification for respondent's position in this regard. The petitioner made no finding that the proposals were arbitrable. Moreover, the finding of the Court below that the Union breached the agreement by striking, necessarily involved a finding that the respondent was not in default under paragraph (10) of the Agreement.

A brief resumé of the facts connected with the conduct of the strike and the reopening of respondent's plant may assist this Court in its determination of the questions here involved. The respondent's closed plant was picketed more or less constantly from March 23, 1935, until July 22, 1935 (R. 217) when martial law was declared in Terre Haute and Vigo County, Indiana (R. 217).

The respondent offered to prove, but the Trial Examiner refused to admit testimony to the effect that on June 15, 1935, eight residents of Vigo County who had been sworn in as Special City Police were moved into the plant for the purpose of protecting the property; that at that time and during the afternoon and evening picketing by strikers and others was in progress; that during the evening large crowds gathered; that during the early morning hours of June 16, 1935, the office building of the respondent's factory was raided and wrecked; and that portions of the factory buildings were also raided and serious damage done therein (R. 220).

On July 19, 1935, the respondent sent some additional watchmen, about 40 or 50 in number, into the plant for purposes of protection (R. 70, 71, 221).

On July 22, 1935, a general strike or labor holiday took place in Terre Haute (R. 67). Two or three hundred strikers and about fifteen thousand other persons

(R. 231) were gathered around the respondent's plant and it was the target for some 200 missiles consisting of rocks, spikes and bolts (R. 234), which inflicted serious damage and endangered the lives of the watchmen and executives. Martial law was declared that day (R. 72) and militia arrived at the plant that evening (R. 235).

On the morning of July 23, 1935, the respondent's factory was reopened and it has been in continuous operation ever since (R. 238). By the second week of September (not the middle of September as stated at page 7 of the petitioner's brief) the respondent had a complete force of satisfactory employees (R. 239), including many former employees (R. 242).

All of the former employees were offered employment by the respondent without any discrimination because of participation in the strike (R. 67; 88; 140) and could have returned to work, but those disgruntled former employees for whom this proceeding is sponsored, refused to accept the offer. Relations at the respondent's plant at the present time are peaceful and harmonious, and the level of operation is commensurate with the existing demand for the respondent's products.

The statement of the case contained in the petitioner's brief creates the impression, pages 6 and 7, that the respondent took back the strikers on and after July 23, 1935, only on the condition that there would be no union recognition or agreement. There is no evidence in the record that there were any conditions imposed by the respondent upon the reemployment of strikers when it opened its plant. The petitioner's reference is to what it found the respondent's position to be prior to July 5, 1935. Indeed, at page 27 of its brief, the petitioner states that the aforesaid "term of settlement" insisted

on by the respondent necessarily ceased to be part of the dispute after July 5, 1935.

The hearing conducted before a Trial Examiner of the petitioner was concluded on December 11, 1935 (R. 370). On December 16, 1935, for reasons not appearing in the record, the proceeding was transferred to and continued before the Board (R. 370). Presumably, the Trial Examiner who heard the witnesses, had no part in finding the facts; whereas the Board, without the benefit of hearing the witnesses, or the opportunity to judge their credibility, made its own findings and issued its decision and order on February 14, 1936. *Seventeen months later* the petitioner filed its petition in the Court below for enforcement of its order. After the entry by the Court below of its decree on July 28, 1938, denying enforcement, the petitioner delayed until the last day permitted by law to petition this Court for a writ of certiorari. This case is now before this Court nearly four years after the men, whom the petitioner seeks to reinstate, voluntarily left their jobs and more than three and a half years after they could have gone back to work if they had wished to do so.

Petitioner's Conclusions of Law, and Order.

The petitioner has found that:

"On or about July 23, 1935, the respondent refused to bargain collectively with the Union as the representative of its employees, or at all, and by reason of such refusal has engaged in an unfair labor practice within the meaning of Section 8, subdivision (5)." (R. 392).

In our argument we will have something to say regarding the unfairness of the Board's attitude in various respects, including its action in seizing upon a single

date as proof of refusal to bargain despite the previous months of repeated bargaining meetings, and despite the fact that an impasse had been reached on the closed-shop issue. Here, however, we want simply to urge upon the Court the importance of examining the record to ascertain whether there is *any* evidence to support this finding.

Mr. Gorby, president of the respondent, when called by the petitioner, testified that on July 23 or 24, 1935, Messrs. Richardson and Scheck, conciliators of the Federal Department of Labor, asked him if he would meet with them and with the Scale Committee of the Union. He was asked by counsel for the Union if the Labor Department conciliators stated for what purpose they were requesting that he meet with the Scale Committee. He answered that they did not (R. 303, 304). He testified that he told them he would meet with them and with the Scale Committee but that no meeting was arranged; that several days later he called Mr. Richardson and told him that he would not meet with him or with the Scale Committee (R. 304, 305).

At the close of Mr. Gorby's examination by counsel for the petitioner, counsel for the respondent moved that the testimony of Cox and Heuer, two witnesses for the petitioner, with reference to Messrs. Richardson and Scheck, be excluded, on the ground that, in talking to Mr. Gorby on July 23 or 24, 1935, Richardson and Scheck had not in any manner, shape or form indicated to him that they had come there with a request from the Union for a meeting between Mr. Gorby and the Scale Committee. Decision of the motion was postponed by the Trial Examiner (R. 307), and was never acted on by him.

The testimony of Cox (R. 72, 75) and Heuer (R. 143, 144), referred to in the motion to exclude, men-

tioned in the foregoing paragraph, was to the effect that the conciliators had contacted the Scale Committee; that they had been requested by the Committee to try to open up negotiations with respondent; and that the conciliators later reported back to the Committee that they were not able to arrange a meeting. When this testimony was offered, counsel for respondent objected to it as not binding upon the respondent (R. 72, 143), not having transpired in respondent's presence. The Trial Examiner admitted the testimony of each of these witnesses on the assurance that it would be connected up by showing that the request of the Committee was communicated to the respondent. Failing that, it was to be excluded (R. 75, 143). Neither Richardson nor Scheck were produced, nor was any other connecting evidence offered. Upon his own statement, therefore, the Examiner should have excluded the testimony of Cox and Heuer. As aforesaid, however, he never acted upon the motion to exclude.

From the foregoing testimony of Mr. Gorby, coupled with that of Cox and Heuer, the petitioner inferred that Mr. Gorby knew that the request for a meeting was that of the Union. It, therefore, held that the testimony which respondent had objected to, and had moved to exclude was properly part of the record. (See Footnote (3) on page 385 of the record.) We shall take up this defect in the petitioner's proof in our argument.

The petitioner, in addition to ordering the respondent to cease and desist from refusing to bargain collectively with the Union as the representative of its employees, also ordered the respondent to

"Discharge from its employment all production employees who were not employed by it on July 22, 1935, and reinstate to the vacancies so created individuals who were so employed and have not since

received substantially equivalent employment elsewhere and place the remainder of such individuals on a list to be called for reinstatement as and when their labor is needed."

The Court below refused enforcement on the ground that by leaving their employment in face of their agreement, the strikers did not come within the rule of the cases holding that an ordinary strike does not interrupt a previously existing employer-employee relation (R. 420). The decision of the Court below will be dealt with more fully in the Argument section of this brief.

SUMMARY OF THE ARGUMENT.

Point I.

There Is No Substantial Evidence to Support the Petitioner's Finding That the Respondent Violated the Act on or About July 23, 1935.

A.

THE FINDINGS OF THE PETITIONER ARE NOT CONCLUSIVE UNLESS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The word "evidence" as used in Section 10 (a) of the Act has been interpreted by this Court and nearly all of the Circuit Courts of Appeals to mean *substantial evidence*, a mere scintilla of evidence being insufficient. *Consolidated Edison Company of New York, Inc., et al., v. National Labor Relations Board*, No. 19 October Term, 1938, decided December 5, 1938.

B.

THE FINDING BY THE PETITIONER THAT THE RESPONDENT VIOLATED THE ACT IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

An examination of the evidence upon which the petitioner based the crucial finding in this case reveals that it is of the flimsiest and most unreliable nature. The petitioner has piled inference upon inference in order to find that the respondent refused to bargain with the Union on July 23, 1935. In doing so it failed to give any consideration to the extensive prior bargaining relations between the respondent and the Union; or to the established custom of the Union in reducing to writing their requests for bargaining meetings.

C.

THE RESPONDENT WAS UNDER NO DUTY TO CONTINUE TO MEET WITH THE UNION ON JULY 23, 1935, AS NEGOTIATIONS TO SETTLE THE STRIKE HAD REACHED AN IMPASSE.

The existence of an impasse in negotiations relieves an employer from the duty to bargain collectively with the representatives of his employees. There was an impasse on the closed shop issue in the case at bar which was in existence at the time of the alleged request of the Union for a meeting to settle the strike. The respondent, therefore, was under no duty to continue to meet with the Union on or about July 23, 1935, even assuming that the strikers were employees.

Point II.

The Strike Was in Violation of the Indianapolis Agreement and Terminated the Employment Status of the Strikers.

A.

THE STRIKE WAS IN VIOLATION OF THE INDIANAPOLIS AGREEMENT

The Indianapolis Agreement was in full force and effect up to March 23, 1935, the date of the strike. It provided that it should be in force until July 14, 1935. The strike of March 23, 1935, called by the Union to enforce its demand for a closed shop, was a violation of the Agreement, inasmuch as the demand was in derogation of that provision of the Agreement preserving the open-shop principle.

B.

THE STRIKE WAS UNLAWFUL AND THEREFORE OPERATED AS A TERMINATION OF THE EMPLOYMENT STATUS OF THE STRIKERS.

The strike occurred prior to the passage of the National Labor Relations Act, and that Act, even if it can be said to continue the employment status of those who engage in an unlawful strike after its passage (and this is seriously doubted) cannot have any application to events at the time of the strike in this case. There was no Federal statute to keep the employment status alive, and under common law, an illegal strike terminated the employment status of those who engaged therein. *Michaelson v. United States, ex rel. Chicago, St. P., M. & O. Ry. Co.*, 291 Fed. 940 (C. C. A. 7th, 1923). Under the Act, the same result should follow, for if agreements, reached as a result of collective bargaining, may be repudiated at will by the parties, the fundamental policy of the Act will be thwarted.

Point III.

Upon the Passage of the Act the Strikers Were Not Employees and the Respondent Was Not Under a Duty to Bargain Collectively With Them or With Their Representatives.

A.

UNDER THE ACT THE DUTY IMPOSED UPON AN EMPLOYER IS THAT HE BARGAIN WITH HIS EMPLOYEES OR THEIR REPRESENTATIVES.

The petitioner concedes (Petitioner's brief, page 16) that if the strikers were not employees within the meaning of the Act at the time of the alleged refusal to bargain, the respondent was under no duty to bargain with the Union. This is a necessary concession under the Act.

B.

THE STRIKERS HAVING CEASED TO BE EMPLOYEES PRIOR TO THE PASSAGE OF THE ACT WERE NOT TRANSFORMED INTO EMPLOYEES UPON ITS PASSAGE.

Although the definition of "employees" contained in the Act may be literally broad enough to include persons who strike in violation of a collective bargaining agreement after the passage of the Act, it cannot be interpreted to include persons who ceased to be employees prior to the passage of the Act.

Point IV.

**The Order of the Petitioner Is Not Within Its Powers
Under the Act and Enforcement of the Order Was
Properly Denied by the Court Below.**

A.

**THE ORDER DISREGARDS THE LIMIT UPON
THE PETITIONER'S AUTHORITY.**

Under the Act as interpreted by this Court, the respondent was free to employ persons to take the place of the strikers until it committed an unfair labor practice, yet the petitioner has ordered the respondent to discharge men it employed prior to the alleged commission of any alleged unfair labor practice and has ordered the respondent to reinstate strikers to the vacancies so created. The provision of the order requiring the respondent to cease and desist from refusing to bargain collectively with the Union likewise disregards the limit upon the petitioner's authority since the petitioner admitted that it did not know whether the Union represented a majority of the respondent's employees at the date the order was made (R. 391).

B.

**NO PART OF THE PETITIONER'S ORDER WILL
EFFECTUATE THE POLICIES OF THE ACT.**

The petitioner is empowered to order such affirmative action as will effectuate the policies of the Act. It may not issue a punitive order. The petitioner's order of reinstatement was punitive, and out of all proportion to the respondent's alleged violation of the Act. Its enforcement at this late date would be even more punitive in effect. The cease and desist provision of the order is also unwarranted. If three years ago petitioner did not

know whether the Union would represent a majority of the respondent's employees, upon the reinstatement of the strikers to the positions they formerly held with the respondent (R. 391), certainly such knowledge is not now available, and for lack of it the cease and desist order is improper.

ARGUMENT.

Point I.

There Is No Substantial Evidence to Support the Petitioner's Findings That the Respondent Violated the Act On or About July 23, 1935.

A.

THE PETITIONER'S FINDINGS OF FACT ARE NOT CONCLUSIVE UNLESS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The National Labor Relations Act provides in Section 10 (e):

"* * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

This Court has interpreted the quoted clause to mean that the petitioner's findings shall be conclusive only if supported by *substantial* evidence. *Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board*, 301 U. S. 142 (1937); *Consolidated Edison Company of New York, et al. v. National Labor Relations Board*, No. 19, October Term, 1938, decided December 5, 1938.

In the latter case this Court cited with approval decisions of several of the Circuit Courts of Appeals that have considered the quality of evidence needed to make

the petitioner's findings conclusive. In *Appalachian Electric Power Co. v. National Labor Relations Board*, 93 F. (2d) 985 (1937), the Circuit Court of Appeals for the Fourth Circuit applied, at page 989, the "directed verdict" test, saying:

"* * * The rule as to substantiality is not different, we think from that to be applied in reviewing the refusal to direct a verdict at law, where the lack of substantial evidence is the test of the right to a directed verdict. In either case, substantial evidence is evidence furnishing a substantial basis of fact from which the fact in issue can reasonably be inferred; and the test is not satisfied by evidence which merely creates a suspicion or which amounts to no more than a scintilla or which gives equal support to inconsistent inferences. * * *." (Emphasis ours.)

The suggestions of the Court in *National Labor Relations Board v. Thompson Products, Inc.*, 97 F. (2d) 13 (C. C. A. 6th, 1938) are helpful. It said, page 15:

"Substantial evidence' means more than a mere scintilla. It is of substantial and relevant consequence and excludes vague, uncertain, or irrelevant matter. It implies a quality of proof which induces conviction and makes an impression on reason. It means that the one weighing the evidence takes into consideration all the facts presented to him and all reasonable inferences, deductions and conclusions to be drawn therefrom and, considering them in their entirety and relation to each other arrives at a fixed conviction.

"The rule of substantial evidence is one of fundamental importance and is the dividing line between law and arbitrary power. Testimony is the

raw material out of which we construct truth and, unless all of it is weighed in its totality, errors will result and great injustices be wrought.” (Emphasis ours)

The position taken by the Circuit Court of Appeals for the Second Circuit in *Ballston-Stillwater Knitting Co. v. National Labor Relations Board*, 98 F. (2d) 758 (1938) was that although it was not at liberty to make its own findings, neither was it “bound to accept findings based on evidence which merely creates suspicion or gives rise to an inference that cannot reasonably be accepted. * * *” (Page 760).

We respectfully request this Court to examine the record in this case with a view to determining whether petitioner's findings are supported by “substantial evidence.”

B.

THE FINDING BY THE PETITIONER THAT THE RESPONDENT VIOLATED THE ACT IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

The petitioner has found that the respondent refused to bargain with the Union on or about July 23, 1935, and upon that finding has based the principal provisions of its drastic order. The obvious reason for the petitioner's selection of this date is that such date is the *only time subsequent to the effective date of the Act that any claim of refusal to bargain can possibly be conjured up to justify the order against the respondent.* This finding sweeps aside as irrelevant and unsubstantial the whole course of dealings between the respondent and representatives of the Union, from the inception

the Indianapolis Agreement in July, 1934, to March 1, 1935, the date of the strike, and thereafter.¹

However, there is no evidence in the record of any refusal by the respondent of a *request of its employees* for a meeting for collective bargaining purposes. The background of the situation on July 23, 1935, must be kept in mind. A strike had been in progress for a period of four months. The strike had been called because the members of the Union refused to work with non-union members, in direct violation of the existing Indianapolis Agreement and the provisions of paragraph 3 thereof (R. 16). There may have been other reasons stated for the strike, but they were merely pretexts; the real reason was the controversy between those who were and those who were not union members. The respondent was involved only because it refused to surrender to the Union's demands that it break its collective bargaining contract, throw overboard the open-shop principle and discriminate against certain of its employees who were unwilling to join and pay dues to the Union.

The resolution passed by the Union on March 17, 1935, just preceding the strike, leaves no room for doubt on this point, viz.:

"RESOLVED, that the members of Federal Labor Union #19694, affiliated with the American Federation of Labor, believe that peace and harmony cannot exist under the present conditions, owing to the

1. The petitioner at the hearing examined into transactions that occurred prior to July 5, 1935, in order to establish a course of conduct (R. 75). Upon finding that the course of the respondent's conduct was to bargain collectively with the Union upon request, usually in writing, the petitioner promptly ignored this important element in the case, as it was inconsistent with the result the petitioner desired to reach.

unfair² practices of the company. We do hereby refuse to continue to work with anyone eligible for membership in our Union who does not show a willingness to become a member on or before March 23, 1935; * * *

It is true that this resolution was prefaced by certain recitals charging the respondent with violating the Indianapolis Agreement, but these recitals were merely self-serving declarations and the charges therein were entirely false.

Furthermore, at the meeting of June 11, 1935, following the strike, there was no controversy as to wages or working conditions (R. 244); again, the only controversy was between the union and the non-union employees as evidenced by the Union's arguments in favor of and demands for a closed shop. Those demands were again definitely refused by the respondent, and properly so under the Indianapolis Agreement.

Coming now to the alleged refusal to meet on July 23, 1935: we submit that there is not the slightest evidence in the record that the Union, or its representatives, requested the respondent to meet with it for bargaining purposes on that day. Certain evidence with respect to the matter, which evidence as we have shown,

2. "In reference to the word "unfair," it clearly appears that, as employed by defendants and labor organizations generally, it has a technical meaning well understood by the plaintiff and by all the persons to whom the council sent notices that plaintiff had been declared unfair. Such declaration means, and in this instance was understood by all the parties concerned to mean, *not that the plaintiff had been guilty of any fraud, breach of faith, or dishonorable conduct, but only that it had refused to comply with the conditions upon which union men would consent to remain in its employ or handle material supplied by it.*" (Italics supplied). *Greenfield v. Central Labor Council*, 104 Ore. 236, 255, 256. Citing *Parkinson Co. v. Building Trades Council*, 154 Cal. 581.

supra, page 14, was admitted by the Examiner upon a condition which was not met by the petitioner, was that two Department of Labor Conciliators contacted the Union, that the Union requested the conciliators to try to open up negotiations with respondent, and that the conciliators later reported to the Union that a meeting with respondent could not be arranged (R. 72-75; 143, 144). *These conciliators did not, nor did anyone else*, advise respondent that they were acting for the Union upon a request by the representatives of the Union for a collective bargaining meeting. Admittedly, the conciliators were the moving parties, not the Union, and the only reasonable inference from such testimony is that the Department of Labor was intervening to settle the strike and was requesting a joint meeting with the respondent and the representatives of the Union. The finding of the petitioner referred to hereinabove, upon this testimony, that respondent knew it had been requested to bargain collectively, is wholly unwarranted. The petitioner reveals the weakness of this inference in the footnote to this part of its findings on page 385 of the record:

"The respondent objected to this testimony on the ground that the conversation between the union and the conciliators does not 'bind' the respondent, and again on the ground that it does not appear that the conciliators told Mr. Gorby that the Union had made a request for the meeting. Mr. Gorby testified that the conciliators asked him to meet with the Scale Committee and that he knew the purpose of the requested meeting. *Since it appears that the conciliators were entrusted by the Union with a mission, duly met with the respondent in pursuance thereof, and reported back to the Union as to the result, it is a proper inference that Mr. Gorby knew of their trust.* Consequently, the evidence of the

witnesses Cox and Heuer, to which objection was taken, is properly part of the record." (Emphasis ours).

The foregoing excerpt of the petitioner's findings of fact does violence to fundamental principles of evidence, by piling inference upon inference. It is indicative of the bias and prejudice with which the petitioner has viewed and determined the issues in this case. We respectfully request this Court to give especial attention to the underscored portion of the excerpt. It reveals the petitioner's method of reasoning and condemns the finding as wholly unwarranted. We submit that by this finding the petitioner in effect holds as follows:

"Since it appears that the conciliators were entrusted by the Union with a mission, of which Mr. Gorby knew nothing, duly met with Mr. Gorby in pursuance thereof without revealing to him that they had been entrusted with a mission and were fulfilling it, and reported back to the Union as to the result, likewise without Mr. Gorby's knowledge, it is a proper inference that Mr. Gorby knew of their trust."

This finding of the petitioner also does outrage to all familiar principles of logic and common sense. The conciliators were Federal officers acting in pursuance of their duty to settle a controversy between the Union and the respondent. They were not agents of the Union, but rather interested third parties. With all due respect to the majority of the Court below, the respondent was under no legal duty either before or after the Act to enter negotiations at the request of these conciliators. Its legal duty under the Act is to meet with those representing a majority of its employees.

The meeting requested by the conciliators was to be trilateral. We submit that from the evidence it is a reasonable and fair inference that Gorby knew that the request for a meeting was the request of the conciliators in the line of their duty. The petitioner seems to rely heavily on the fact that Gorby stated at the hearing that he knew the purpose of the proposed meeting. Naturally he would, but it is not natural that he would know that the request made by the conciliators was made on behalf of and at the instance of the Union. *It is worthy of notice that the petitioner failed to call the conciliators as witnesses, or to support the testimony of Cox and Heuer in any manner as the Examiner had required.*

Taking the view of the evidence most favorable to the petitioner, we submit that it does no more than give equal support to inconsistent inferences. This is not substantial evidence, and does not satisfy the requirements of the Act. *Appalachian Electric Power Co. v. National Labor Relations Board, supra.* The petitioner's finding that the respondent refused to bargain with the Union is not conclusive on this Court, and should be disregarded.

Before concluding our argument on this point, we feel it proper again to call to the attention of the Court the fact that nearly all of the important collective bargaining meetings of which there is evidence in the record, from the inception of the Indianapolis Agreement in July, 1934, through the meeting of June 11, 1935, were held as the result of written requests, or other communications transmitted through the mails, from the Union to the respondent. (See, for example, Respondent's Exhibit 11, Petitioner's Exhibit 9, Respondent's Exhibit 14, Petitioner's Exhibit 10, printed in the

appendix to the Petitioner's Brief, at pages 72, 54, 73 and 55 respectively, and Petitioner's Exhibit 4, and Respondent's Exhibit 13 printed in the appendix to our brief at pages 63 and 62 respectively). In addition, the Union's requests for meetings that were made in September and October, 1935, were in writing (Petitioner's Exhibits 5 and 6, printed in the appendix to our brief at pages 64 and 65). This well-established custom of written communication was not observed in the alleged request for a meeting on July 23, 1935, and this should be very persuasive on the question of whether there was such a request, especially in view of the doubtful character of the evidence on the subject.

It is not disputed that the Union wrote to the respondent on September 20, 1935, requesting the respondent to meet with it, or that the respondent did not reply to the letter. Here the petitioner could have found a refusal to bargain with the Union, but did not do so for the obvious reason that respondent then had a full force of employees, whose discharge could not be ordered to make jobs for the strikers. *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333 (1938); *Black Diamond S. S. Corp. v. National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2nd, 1938). The petitioner, therefore, chose to rely upon a refusal to bargain of its own creation, which the record does not sustain.

We shall now turn to the petitioner's finding that the respondent violated Section 8, subdivision (1) of the Act on or about July 23, 1935, by soliciting strikers to return to work (R. 385, 386). The petitioner has not based any part of its order on this alleged violation, so we shall confine our discussion to a consideration of the evidentiary support for the finding.

The petitioner cannot seriously contend that suggesting to a few individuals that they should come back to work, after an unjustifiable strike, is a violation of the Act. This finding and conclusion, if sustainable in event, must rest upon the testimony of two persons who testified that they were told, upon being requested to return to work, that there would be no union. The persons referred to are James Hough, whose testimony appears in the record at pages 154 to 160, and Paul Steuerwald, whose testimony appears in the record at pages 100 to 112.

Steuerwald's statement can be dismissed summarily because he testified that he was told there would be no union on or about the 20th day of May, 1935 (R. 101). There was no testimony by this man that he was told, before the effective date of the Act, viz., July 5, 1935, that there would be no union in the respondent's plant. Similarly, the respondent's newspaper advertisement of June 1935 (Respondent's Exhibit 17, Petitioner's Brief, page 74) could not be a violation of the Act.

Hough testified that a foreman named Irwin told him that there would be no union and that the officials of the company would not meet with the Scale Committee (R. 156). The petitioner says that this was not denied, but Irwin testified (R. 354) that he did not tell Hough that any official of the company had said that he would not meet with the Scale Committee. That, perhaps, is not a categorical denial of Hough's testimony, but at least the petitioner's statement is not accurate.

However, what Hough was told could not constitute a violation of the Act under any circumstances unless Irwin was authorized to speak for the respondent and acted within his authorization. There is absolutely no

Argument.

evidence that Irwin was authorized to speak for the respondent other than that he had been a foreman before the strike, and that he was a foreman afterward. True, Hough testified that Irwin said he had come at the instance of Mr. Grabbe (Respondent's General Superintendent), but this hearsay evidence is the only evidence of Irwin's authorization to speak for the respondent other than the fact of his employment as foreman and it is axiomatic that agency cannot be proved by declarations of an alleged agent.

Little reliance should be placed on hearsay of this nature, because it is clear that strikers hostile to an employer could circulate among other strikers and make statements professedly on behalf of the employer that would amount to violations of the Act. Especially is this true where, in the petitioner's opinion (R. 385, 386), "Testimony of the foreman that they were not instructed by the respondent to solicit seems entitled to little or no weight." *The petitioner thus makes refutation of the hearsay testimony a practical impossibility by the inconsistency of first placing faith in the extra-judicial statements of persons when related to it via the hearsay route and then denying credibility to the statements of the same persons when they are testifying directly, and under oath.* The petitioner's ruling is obviously absurd in a case where the burden to show authority was clearly on the complainant for the alleged agent held a position which would under no circumstances allow him to determine or speak for the respondent on matters of policy.

However, even with the above mentioned hearsay in the record, there is no evidence of any kind anywhere in the case that reveals that the respondent authorized Irwin to do any more than solicit an employee to return

to work. An authorization to solicit men to return to work did not give Irwin authority to determine or announce policies for the respondent, and inasmuch as there is no evidence as to the scope of the authorization of Irwin, we submit that the petitioner's finding that the respondent told some of the strikers that there would be no union is not supported by the evidence. It is noteworthy that there was no other testimony as to any such attitude on the respondent's part, although the Union could have produced other witnesses if any there were.

C.

**THE RESPONDENT WAS UNDER NO DUTY TO CONTINUE
TO MEET WITH THE UNION ON JULY 23, 1935, AS
NEGOTIATIONS TO SETTLE THE STRIKE HAD
REACHED AN IMPASSE.**

We have shown in the preceding section of our argument that there is no substantial evidence to support petitioner's finding that the respondent refused to bargain collectively with the Union on or about July 23, 1935. Assuming *arguendo* that the respondent had refused to meet with the Union, it was under no duty to do so at the date of the alleged refusal, since negotiations to settle the strike had reached an impasse. The Circuit Court of Appeals for the Fourth Circuit indicated in its opinion in *Jeffery-DeWitt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134, at 139, 140 (1937), that where an actual impasse has been reached in negotiations, an employer is not bound to bargain collectively with the representatives of his employees. The petitioner in its brief, pages 20 to 28, apparently concedes that the existence of an impasse relieves an employer from the duty to bargain collectively. Indeed, it would seem that such duty imposed by the Act must be qualified to that extent.

The petitioner argues, however, that no impasse existed on July 23, 1935, that would render future negotiations futile (Petitioner's brief, pages 27, 28). It argues that even though an impasse was reached at the meeting on June 11, 1935, conditions changed thereafter so that on July 23, 1935, there was no impasse. We submit that an actual impasse on the Union's demand for a closed shop was reached on March 23, 1935, the date of the strike, that it was still existing on June 11, 1935, and that there is nothing to show that either the Union or the respondent had receded from their respective positions on July 23, 1935, or thereafter. A complete history of the closed-shop demands of the Union is set forth at pages 6 to 9, *supra*, and we respectfully request this Court to examine that statement carefully, as well as the portions of the record referred to therein.

With reference to our contention that an impasse was reached, we wish to point out the fact that even the petitioner went no further in its findings of fact than to say;

"It is equally consistent with the facts that this meeting (June 11, 1935) failed by reason of the Union's insistence on the closed shop or by reason of the respondent's insistence that it would make no agreement with the Union at all." (R. 390)

We respectfully submit that the Union's insistence on the closed shop demand was the fundamental reason for the breakdown of negotiations at the meeting just referred to, and that due regard for the facts of the case compels that conclusion. It must be remembered that the closed shop demand was the dominant theme throughout the negotiations between the respondent and the Union, as may readily be seen from the aforementioned statement, *supra*, at pages 6 to 9.

The petitioner, in its effort now to show that there was no impasse on the closed shop issue on June 11, 1935, has even gone to the length of overlooking the passage from its opinion that we have quoted above. It says, at page 26 of its brief:

"The record makes it clear, however, that the Union took no inflexible stand, and that the failure of the conference to settle the strike cannot be traced to the Union's position on that matter."

Petitioner has sought throughout its argument to minimize the importance of the closed-shop issue. The petitioner says, at page 25 of its brief, that the financial secretary of the Union specifically testified that the closed-shop issue did not cause the strike, and cites pages 82 to 84 of the record to support its statement. At those pages of the record the testimony of Otis Cox is set out. The testimony that the petitioner relied on for support for its statement must be the following, beginning near the bottom of page 82:

- "Q. Now at this meeting on June 11, 1935, who all was present?
- A. Mr. Gorby, Mr. William Gorby, Mr. Grabbe, L. G. Brown, G. M. Heuer and myself.
- Q. And didn't you say at this meeting that what the union wanted was a closed shop?
- A. Not exactly in those words, no.
- Q. Well, what did you say?
- A. That was what we wanted when we came out.
- Q. What did you say—
- Q. (*By Trial Examiner Lyons*) What was your last answer?
- A. That was our demands when the strike was called.
- Q. Oh.
- A. A closed shop.

Trial Examiner Lyons:

All right.

Q. (*By Mr. Jaburek*) And that was why the strike was called?

A. No, sir."

To argue that the demand for a closed shop did not cause the strike, but that that was the Union's demand when the strike was called, may be technically accurate but it detracts not at all from the significance of the closed shop demand in the case at bar. It could be said of practically any strike that it was caused, not because of the strikers' demands, but because the employer refused to grant the demands.

To return to the petitioner's argument at page 26 of its brief, we find that this statement is made:

"The closed shop question was undoubtedly discussed (R. 245-246, 300-301), but it is plain that the failure of the meeting is largely attributable to respondent's position that it would take all the strikers back without discrimination 'but without Union recognition or agreement.'"

And further, at page 27:

"But any impasse on this issue, as distinguished from the closed-shop issue, was necessarily resolved on July 5, when the Act became effective."

Going back to the finding of the petitioner (R. 390), quoted *supra* at page 32, it is clear that after July 5, 1935, the impasse which the petitioner admitted existed was confined to the closed-shop issue.³ Let us briefly

3. The Union therefore had nearly 20 days between the passage of the Act and the day of the alleged refusal to bargain in which to notify the respondent that it desired to avail itself of its rights under the Act and that it would not insist upon a closed shop. That the Union did not do so seems to indicate both that it did not request a meeting on or about July 23, 1935, and that it had not abandoned its demand for a closed shop.

examine the argument advanced by the petitioner to show that through changing conditions the impasse on the closed-shop issue was terminated prior to the alleged refusal to bargain. The petitioner's argument, page 27 of its brief, consists first of a statement that the plant was reopening; that martial law had been declared and picketing forbidden; and that the respondent had solicited strikers to return to work, without any conclusion being drawn from such facts, and second, of the contention that the Union's approach to the respondent through conciliators demonstrated its conciliatory intention. With regard to the statement concerning declaration of martial law, etc., those facts certainly do not indicate that the Union had an intention of compromising on the closed-shop issue. As for the assumption, made first in the petitioner's decision at page 390 of the record, that the Union's approach through conciliators demonstrated its conciliatory intention, we submit that the petitioner's position is entirely unfounded. In the first place, there is nothing to show that the conciliators came on the scene at the request of the Union. In the second place, there is no dispute over the fact that the Union actually did ask Mr. Robert Mythen, a federal conciliator, to try to settle the strike on or about April 24, 1935 (R. 137, 138), some time prior to the meeting of June 11, 1935, when it repeated its closed-shop demand. It is entirely clear, therefore, that even if the Union did approach the respondent through conciliators on July 23, 1935, it is an unwarranted assumption for the petitioner to say that the Union's intentions were conciliatory and that further negotiations would yield a settlement by compromise. This is another clear example of evidence that at best merely gives equal support to inconsistent inferences, is therefore not substantial evidence, and does not support the petitioner's finding that in this case the respondent was

under a duty to continue to meet with the Union. *Appalachian Electric Power Co. v. National Labor Relations Board, supra.*

In this connection the alleged similarity (Petitioner's brief, pages 27, 28) between the case at bar and *Jeffery-DeWitt Insulator Co. v. National Labor Relations Board, supra*, clearly is not controlling here. There the petitioner's finding that the alleged refusal to negotiate further was unreasonable and hence was an unfair labor practice, was deemed to be conclusive upon the Court because supported by substantial evidence, 91 F. (2d) 134, at 139, 140. Here there clearly was an impasse on the closed shop issue, and the petitioner's finding that the respondent could not have reasonably believed that further negotiations would have been futile has no substantial support in the evidence.

We respectfully submit that even had there been no impasse in negotiations, the respondent's refusal to meet with the conciliators and the Union was justified, for at that very time the respondent was busily engaged in resuming operations after a long and costly strike, and had its attention occupied by many matters of far greater importance than another discussion of the closed shop issue.

Point II.**The Strike Was a Violation of the Indianapolis Agreement and Terminated the Employment Status of the Strikers.**

This point is the one upon which the decision of the Court below turns. We intend to show that the decision hereon was proper, and should be affirmed. However, the other points argued herein are equally decisive and denial to the petitioner of enforcement of its order, we believe, rightly follows upon a consideration of any of the four main points of our argument.

A.**THE STRIKE WAS IN VIOLATION OF THE INDIANAPOLIS AGREEMENT.**

The Indianapolis Agreement was entered into on July 14, 1934 and was to be effective for one year, that is until July 14, 1935. It was in full force and effect therefore until the occurrence of the strike on March 23, 1935, or until that date the Agreement had neither been modified, terminated, nor breached. In passing we wish to call to the attention of this Court a finding of the petitioner that bears on the matter under discussion. The petitioner found that many months prior to the date of the strike, the Union had given thirty days' notice of termination in accordance with the Agreement (R. 87). This finding, if such it can be termed, could only have been based upon the Union's letter of October 23, 1934, giving thirty days' notice of a request to *modify*, not to terminate, the contract (Respondent's Exhibit No. 11, printed at page 72 of petitioner's brief). There was no other such notice during the effective period of the contract and no notice whatever of termination.

Furthermore, this so-called finding totally ignores the fact that both parties to the Agreement continued to act under it for several months after the expiration of the thirty days specified in the aforesaid letter of October 23, 1934. It can only be characterized as a bold and entirely improper attempt on the part of the petitioner to justify the conduct of the strikers and to alleviate the natural consequences of their acts. The finding, having served its purpose in convincing the petitioner that it was right in its decision, has now conveniently been abandoned since it was too naked a fabrication to withstand judicial scrutiny. The petitioner's resort to such a deliberate misrepresentation of the facts should make this Court extremely careful in its examination to determine whether any of the other findings are supported by substantial evidence as is required by law, or whether they are the result of bias and prejudice.

The Court below found (R. 423), and we submit rightly, that the strike on March 23, 1935, was in violation of the Indianapolis Agreement. Its finding is based upon the fact that the Agreement contained this provision in paragraph 10, (R. 17) :

"In any case in which a satisfactory settlement of a dispute arising under this contract cannot be reached, such dispute shall be referred to a committee of arbitration composed of two persons selected by the Management, two persons selected by the Union, and fifth person to be selected by these four, who shall reach a decision which shall be final and binding upon both parties to this contract. There shall be no stoppage of work by either party to this contract, pending decision by the Committee of Arbitration."

The petitioner seeks to show that the provision banning stoppages of work was applicable only pending

arbitration, and that as the respondent refused to arbitrate upon the proposals of the Union, the provision did not become operative and the Union was free to strike (Petitioner's brief, page 38). This contention, we submit, cannot be supported. It is worthy of attention, however, because of its serious implications.

It is astonishing that the petitioner should advance an argument which means that employees who have entered into a contract through collective bargaining with their employer covering working conditions and other matters of mutual interest, by which they agree to abide for a definite period, can throw the contract overboard at will and still retain the status of employees and the right to insist that their employer bargain with them. Presumably, the primary object of the petitioner's existence is to encourage the making of fair collective bargaining agreements and not their breach, as does its decision in this case. Is it conceivable that in its zeal to support, in its judicial capacity, the contentions it has made in one or another of its numerous other capacities, the petitioner has overlooked this fundamental object of the Act? We realize that the wisdom of Congress in endowing the petitioner with various capacities is not a question with which this Court is presently concerned, but as the motive for a deed often serves as its best explanation we have thus digressed for a moment to offer a possible explanation for this amazing contention of the petitioner.

It seems to us clear beyond the necessity of demonstration that when an employer and his employees enter into a contract covering working conditions and setting up the standards by which their relations are to be governed for a specified period, each party is bound and, whether expressed or not, it is an implied condition of such an agreement that operations shall not be inter-

rupted by voluntary action on the part of employer or employees. If the agreement provides for means by which it may be modified, that of course leaves the door open for the introduction of changes. However, it seems to us that fundamentally the parties have said to each other: "Here is our agreement, we will work under these conditions for a year, and matters not covered herein are of no importance." The fact that disputes arising under the agreement are to be submitted to arbitration, while indicative of a peaceful philosophy, in reality is a non-essential. Its absence would not justify a strike to obtain other terms of employment than those agreed upon. A provision restraining stoppages of work pending arbitration likewise evidences the reasonable attitude of the parties, for by it they say that even in the important matters to which we have agreed we will employ the forces of reason in case of disagreement rather than cast our agreement aside. *How can it be said that the meaning of such a contract as here outlined is that one of the parties can avoid all of its obligations under its solemn agreement merely by engaging in a dispute with the other over a matter considered to be too unimportant to merit inclusion in the agreement?* This Court is aware of the many collective bargaining agreements covering thousands upon thousands of workers that are now in effect. Are the relations of those workers with their employers to be jeopardized by the adoption of the contention here advanced by the petitioner? We are confident that this Court will not lend its sanction to the promotion of such a subversive doctrine, but rather will adhere to the doctrine it has so recently announced in *Consolidated Edison Co. of New York et al. v. National Labor Relations Board*, No. 19 October Term, 1938, wherein Mr. Chief Justice Hughes said:

"The Act contemplates the making of contracts with labor organizations. That is the manifest objective in providing for collective bargaining. * * *

Moreover, the fundamental purpose of the Act is to protect interstate and foreign commerce from interruptions and obstructions caused by industrial strife. This purpose appears to be served by these contracts in an important degree. Representing such a large percentage of the employees of the companies, and precluding strikes and providing for the arbitration of disputes, these agreements are highly protective to interstate and foreign commerce."

The finding of the Court below that the strike of March 23, 1935, was in violation of the Indianapolis Agreement could well have been buttressed by additional facts established by the record. In our statement, *supra*, pages 6 to 9, we have referred at length to the testimony that shows conclusively that the only real dispute was involved in the Union's demand for a closed shop. The petitioner's contention to the contrary is so overwhelmingly refuted by the uncontradicted testimony as not to deserve serious consideration. The respondent's refusal to accede to the closed-shop demand, because the open-shop principle was incorporated in the then effective agreement, resulted in the strike resolution of March 17, 1935, quoted *supra* at page 3. The language of that resolution needs no interpretation; it stated unequivocally that the Union would not work in an open shop after March 23, 1935 and the strike occurred on that very day.

Therefore, in addition to the violation of the anti-strike arbitration clause, upon which the Court below based its decision, the Union violated a fundamental implied condition of collective bargaining agreements and its own expressed agreement to accept the open-shop principle for the effective period of the contract.

B.**THE STRIKE WAS UNLAWFUL AND THEREFORE OPERATED AS A TERMINATION OF THE EMPLOYMENT STATUS OF THE STRIKERS.**

We have just shown that the strike of March 23, 1935, constituted a breach of the Indianapolis Agreement. It was therefore unlawful. We turn now to a consideration of the effect of an unlawful strike on the employment status of the strikers. We admit, as the Court below has stated (R. 420), that even prior to the passage of the Act, a strike did not ordinarily interrupt the employment status of strikers. Starting from this premise, the petitioner reasons that in every case strikers continue *under the Act* to be employees as long as the labor dispute in which they are engaged is current, because, petitioner argues, to hold otherwise would frustrate the purposes of Congress. This does not follow. The petitioner while seeming to meet our argument, by quoting the definition of the term "labor dispute" as used in the Act, actually avoids our argument entirely.

The strike occurred in March, 1935. The critical question is, what was the effect of that strike? We submit that the strike, not being an ordinary strike, but being rather an unlawful, illegal strike, in violation of a fair collective-bargaining agreement, then and there on March 23, 1935, terminated the employment status of the strikers. What does it matter that Congress, months later, passed a law that contained a definition of "labor dispute" that might be said to include an ordinary strike that was still in effect? Let us repeat, the question is whether the strikers were employees after they quit work on March 23, 1935, in breach of their contract. We submit that under the then existing law they were not.

In *Michaelson et al. v. United States ex. rel. Chicago, St. P. M. & O. Ry. Co.*, 291 Fed. 940 (C. C. A. 7th, 1923) it was specifically ruled that participation in an unlawful strike makes men strangers to their former employer, that the refusal to work under such circumstances severs the workers from their jobs and that they no longer are employees of their former employer. That decision of the Circuit Court of Appeals was reversed by this Court on the ground that it was not necessary that the status of employment exist in order to bring into operation the provision of the Clayton Act for a trial by jury. (266 U. S. 42). This Court did not disturb the ruling as to the effect of an unlawful strike. The petitioner in its brief in support of its Petition for Writ of Certiorari (pages 16, 17) cited language of the opinion of this Court in the *Michaelson* case as being applicable here. The slightest regard for accuracy would have shown that such language is not applicable to the decision of the Court below in the instant case. There this Court stated that the exclusion of railroad employees from the Clayton Act was not to construe that Act, but to engraft upon it an unwarranted exception. In the instant case the Court below did not exclude a class of employees from the terms of the National Labor Relations Act, and we do not contend that that should be done. What the Court below did say, and we submit rightly so, was that men who struck, prior to the passage of the Act, in violation of a fair collective bargaining contract ceased to be employees. The Act was not then in effect and could have no application, hence resort to a construction of the Act was neither indulged in nor, for that matter, required.

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Point III.

Upon the Passage of the Act, the Strikers Were Not Employees and the Respondent Was Not Under a Duty to Bargain Collectively With Them.

Under this point of our argument our position is that since the strikers were not employees of the respondent, the Act imposed no duty upon the respondent to bargain with the Union because the passage of the Act could not convert the strikers into employees. The statement in the opinion of the Court below that the respondent violated its duty to bargain is not necessary to its decision, as its finding that the strikers were not employees precluded an enforcement of the petitioner's order.

A.

UNDER THE ACT THE DUTY IMPOSED UPON AN EMPLOYER IS THAT HE BARGAIN WITH THE REPRESENTATIVES OF HIS EMPLOYEES.

An examination of the petitioner's brief reveals that argument upon this contention is unnecessary. At page 16 of its brief, the petitioner concedes that if the strikers were not employees, the respondent was under no obligation to bargain with the Union.

B.

THE STRIKERS HAVING CEASED TO BE EMPLOYEES PRIOR TO THE PASSAGE OF THE ACT, WERE NOT TRANSFORMED INTO EMPLOYEES UPON ITS PASSAGE.

If this Court accepts the proposition that the unlawful strike of March 23, 1935, terminated the employment status of the strikers, and we submit that no other conclusion is reasonable, it is unnecessary for us to demonstrate that the passage of the Act could not trans-

form the strikers into employees of the respondent, as the impossibility of such an effect of a Federal law is self-evident. Therefore, we shall confine ourselves to an exposure of the defects in the petitioner's attempt to show that the strikers were employees after July 5, 1935.

In its argument the petitioner relies upon *Jeffery-DeWitt Insulator Co. v. National Labor Relations Board*, *supra*, and *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th, 1937), in both of which cases this Court denied certiorari. An examination of those cases indicates that they are not applicable here. In each, the present petitioner was held to have acted within its authority in ordering the reinstatement of *employees* to the jobs they had relinquished by striking prior to the passage of the Act. However, in those cases the strikes were ordinary strikes, not in violation of collective bargaining agreements, and under the law as it existed prior to the passage of the Act, the strikers continued to be employees during the active prosecution of the strikes. Those cases did not involve the question here presented, viz., whether the petitioner has authority to order the reinstatement of strikers who were not employees, or in other words, whether the Act can be said to have transformed non-employees at common law into employees under the Act.

The other cases cited by the petitioner at page 18 of its brief, except for *Michaelson v. United States*, 291 Fed. 940 (C. C. A. 7th, 1923), which, as we have shown (page 43, *supra*), supports the respondent's position, and *State v. Personett*, 114 Tenn. 680, and *Uden v. Schaffer*, 110 Wash. 391, which do not involve persons on strike, do not merit special mention. The only bearing these other cases have at all on the case at bar is that they support that proposition which we readily admit,

viz., that at common law, an ordinary lawful strike did not terminate the employment status of the strikers. The cases cited by the petitioner indicate that it has entirely ignored the real issue, which must be resolved in its favor if it is to prevail in this case, and has spent its efforts in establishing a point upon which there is no disagreement.

In conclusion of this point of our argument, we wish to suggest that some light can be cast upon the question whether the strikers were employees after they unlawfully struck, by considering the case of a person who, prior to the passage of the Act, was discharged under circumstances which, after the passage of the Act, would constitute an unfair labor practice. Under the Act a person discharged as a result of an unfair labor practice continues to be an employee. A discharge under such circumstances, prior to the Act, ended the employment status and that status was not revived by the passage of the Act.⁴ Similarly, a person whose contractual relations with his former employer were completely severed prior to July 5, 1935, should not have his status restored thereafter by the Act. There is no valid reason for saying that the Act is applicable in one case and not in the other. We do not believe this Court will assume that Congress contemplated that aid to those who unlawfully strike in violation of their solemn agreement, reached through collective bargaining, would do more to promote collective bargaining than would similar aid to an innocent worker who was unjustly discharged through a practice designed to defeat that desirable end.

4. In fact, the petitioner has held that the fact that workers were discharged because of union membership prior to the passage of the Act could not be made the basis of a complaint against their former employer. See *Appalachian Electric Power Co. v. National Labor Relations Board*, 93 F. (2d) 985, 988 (C. C. A. 4th, 1938).

23

Point IV:

**The Order of the Petitioner Is Not Within Its Powers
Under the Act and Enforcement of the Order Was
Properly Denied by the Court Below.**

A.

**THE ORDER DISREGARDS THE LIMITS UPON THE
PETITIONER'S AUTHORITY.**

A discussion of the nature and effect of the order of the petitioner must not be construed as an admission of the authority of the petitioner to enter any order in this case affecting the respondent. We think, however, that the order itself strongly indicates the general attitude of the petitioner and its bias in this matter and a consideration thereof may be helpful in determining the other issues in the case. We quote the order:

"ORDER.

On the basis of the findings of fact and conclusion of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, the Columbian Enameling & Stamping Company, and its officers and agents, shall take the following action, which the Board finds will effectuate the policies of the Act:

1. Discharge from its employment all production employees who were not employed by it on July 22, 1935, and reinstate to the vacancies so created individuals who were so employed and have not since received substantially equivalent employment elsewhere and place the remainder of such individuals on a list to be called for reinstatement as and when their labor is needed.

Argument.

2. Upon reinstating its employees as required in paragraph 1 of this order, shall cease and desist from refusing to bargain collectively with Enameling & Stamping Mill Employees Union, No. 19694, as the exclusive representative of the production employees employed by respondent in respect to rates of pay, wages, hours of employment and other conditions of employment.

3. File with the National Labor Relations Board on or before the thirtieth day from the date of service of this Order, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements."

We shall here discuss the first and second provisions of the order; the third obviously has no present significance. The first provision of the order requires the respondent to discharge all of its production workers who were not employed by it on July 22, 1935 and reinstate to the vacancies so created individuals who were employed by the respondent on July 22, 1935, with certain limitations required by the Act. Assuming, for the sake of argument only, that the respondent had any production employees on July 22, 1935, what does the order mean? The petitioner argued in its briefs in the court below, and argues in its brief in this Court, page 35, that the order does not mean what it says—that it merely requires the respondent to reinstate the strikers, discharging if necessary, to make room for the strikers, only those employees who were first hired after the Act had been violated. However, and this is an important matter for consideration, the petitioner gives this Court no aid in its consideration of whether the order as construed by the petitioner should be enforced. Assuming that the strikers continued to be employees, and also assuming that the respondent refused to bargain collectively with the Union, the petitioner itself found that

ere was no refusal to bargain collectively with the
nion until *several days after July 23rd or 24th, 1935*
(R. 386). The petitioner, this Court will notice, does
nothing at all to establish the date of the alleged refusal
to bargain. Gorby, when testifying as a witness for the
petitioner (R. 303-307), was asked the following ques-
on:

"Now, Mr. Gorby, about the 23rd or 24th of
July, 1935, did you have a conversation with either
Mr. Richardson or Mr. Sheck, labor conciliators?"

Gorby answered:

"Yes, sir."

The following questions and answers appear in the
record at page 305:

- Q. Did you have any further conversation with
either Mr. Richardson or Mr. Sheck about this
subject subsequent to July the 23rd or 24th?
- A. Sometime later, I do not know just how many
days later—I could not tell you that—I called
Mr. Sheck—or Mr. Richardson, and told him
that I would not have any meeting with him or
with the Scale Committee.
- Q. And that may have been a day or so later, then,
this time that we are talking about now—
- A. Several days.
- Q. —around about—
- A. Well, it was several days later."

The word "*several*" means more than two but not
very many (Webster's New International Dictionary.)
Therefore, the incident that the petitioner has seized
upon as a refusal to bargain occurred not earlier than
July 26th or 27th, 1935 and perhaps later. Why the
petitioner has not openly abandoned July 22, 1935, the
date stated in its order, is difficult to understand, except

that it apparently recognizes the respondent's right to fill the places of the strikers, even assuming that they were employees, up until the time of the commission of an unfair labor practice. *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333 (1938).

We respectfully submit, therefore, that the Court below was correct in refusing to enforce the first provision of the petitioner's order for the foregoing reason, in addition to the fundamental reason that the strikers were not employees, and therefore the petitioner could not order their reinstatement.

The second provision of the order requires that the respondent, after reinstating the strikers as ordered, cease and desist from refusing to bargain collectively with the Union. Again assuming that the strikers continued to be employees, and that the respondent refused to bargain, with the Union, should the Court below have enforced this provision of the order?

We submit this part of the order is entirely outside the petitioner's authority. The duty of an employer under the Act is to bargain collectively with the representatives of a majority of its employees in a unit appropriate for the purposes of collective bargaining. The petitioner is empowered under the Act to order an employer to cease and desist from the commission of any unfair labor practice. The petitioner says that its "cease and desist" orders look to the future (Petitioner's brief, page 32). Its order, therefore, means that the respondent must cease and desist in the future from refusing to bargain with the Union. In other words, the respondent must bargain with the Union if it is requested to do so. The petitioner has thus ordered the respondent to do something it is not lawfully bound to do for its duty, as aforesaid, is to bargain with the rep-

representatives of a majority of its employees, and the petitioner admitted in February, 1936 that it did not then know whether the Union did represent a majority (R. 391).

R.**NO PART OF THE PETITIONER'S ORDER WILL
EFFECTUATE THE POLICIES OF THE ACT.**

We have heretofore shown that the petitioner's order should not be enforced because of the fact that the strikers ceased to be employees. We have also shown that even if the strikers could be deemed to be employees of the respondent, the petitioner's finding that the respondent violated the Act is not supported by substantial evidence. We have likewise examined the order in light of the petitioner's authority and have shown that the action required cannot lawfully be the subject of an order against this respondent. Now we turn to a consideration of the question whether the enforcement of the order would effectuate the policies of the Act.

The petitioner is limited in ordering a respondent to take affirmative action to such action as will effectuate the policies of the Act. The cease and desist provision of the order does not require in terms the taking of affirmative action, but since it does contemplate the entering into negotiations by the respondent with the Union (an affirmative act), we shall also consider the second provision of the order under this heading, as well as the first provision of the order.

Whether the first provision be taken literally or as interpreted by the petitioner, it is clear that in order to carry it out, the respondent must discharge as many employees as it reinstates strikers. This follows from

the fact that the respondent cannot hire more men than it needs and would not hire less than such number. The respondent then must discharge, under the petitioner's order, men not employed by it on July 22, 1935 (or some other date if the order does not mean what it says) and reinstate men who went out on strike on March 23, 1935. In this way, says the petitioner, the *status quo* existing before the alleged refusal to bargain is to be restored. Of course, the petitioner does not desire that the *status quo* existing immediately before the alleged refusal to bargain be restored, because that would mean a restoration of the strike status—obviously undesirable. It also does not want to restore the *status quo* existing at the time when the respondent told the conciliators that it would not meet with them or with the Scale Committee because that would decrease the number of potential reinsttees, for the reason that even if the refusal communicated to the conciliators was an unlawful refusal to bargain with the Union, the petitioner could not require the respondent to discharge any persons hired prior to the alleged refusal to bargain. Therefore, the petitioner has required the restoration of a *status* existing months prior to the petitioner's creation, viz., the *status quo* prior to March 23, 1935.

What is the assumed justification for such an interference with the petitioner's business, and with the affairs of its employees? Merely the unsound, impractical, and highly prejudicial opinion of the petitioner that had the respondent attended the conference proposed by the conciliators,⁵ the men on strike *might have been put back to work!* One cannot help but be shocked that a powerful regulatory body should countenance,

5. At page 391 of the record the petitioner seems to forget that it had found that the meeting was requested by the Union.

much less indulge in, such reasoning. Instead of asking this Court to shut its eyes to some of the plainest facts of daily existence, as has the petitioner, we ask this Court to view the extreme to which the petitioner has been adventured in requiring action supposedly designed to effectuate the policies of an Act passed to promote, not an unbridled interference with business by an administrative agency, but rather the orderly processes of collective bargaining.

The petitioner argues at pages 30 to 34 of its brief that the Court below misconstrued the Act in refusing to enforce the petitioner's order on equitable grounds because of the misconduct of the strikers. We wish to point out that the remarks of the Court below that are criticized by the petitioner were not necessary to its decision of the case as it is clear beyond question that the point upon which the decision turned was that the strikers terminated their employment status by striking, prior to the passage of the Act, in violation of their contract with the respondent.

The petitioner's citation of *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, and *Agwilines, Inc., v. National Labor Relations Board*, 7 F. (2d) 146 (C. C. A. 5th, 1936), do not indicate that a different result should have been reached by the Court below. It did not decide that the rights sought to be enforced were private rights. It held that the strikers were not employees, and had no rights under the Act. We do not contend that the proceeding is an equitable one as stated by the petitioner at page 31 of its brief, so that the cases, *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2nd, 1938) and *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th, 1937), cited

by the petitioner to the contrary need not be discussed at this point. It seems sufficient to say that their holding that misconduct of employees does not affect their rights under the Act does not conflict with a decision that holds that persons who struck before the Act, in violation of their contract, were not employees.

Even though the Court below might have been in error in indicating that the order should not be enforced for reasons of equity, we submit that its remarks must have been prompted by the obvious injustice of the drastic nature of the petitioner's order based upon a single alleged refusal to bargain after the long course of collective bargaining meetings in which the respondent had participated in good faith and also by the extreme and unusual hardship upon both the respondent and its present employees incident to enforcement of the order at a time so remote from the strike and from the alleged refusal to bargain. We submit that it is proper to suggest that even though "employees" cannot be estopped because of their misconduct, the petitioner may be barred through its laches in seeking enforcement of its order. As is pointed out elsewhere in this brief, the long delay of the petitioner in seeking enforcement of its order was of its own choosing. We submit that it is clear beyond question that an order, proper when made, may become clearly improper if its enforcement is delayed. If the delay in petitioning for enforcement is attributable to the petitioner, the petitioner should suffer the consequences should enforcement of the order become impossible, unfeasible or unjust. In this connection, we call to the Court's attention the policy of the Act for expeditious enforcement of the orders of the Labor Board as incorporated in section 10 (1) viz. "Petitions (to Circuit Courts of Appeals)

filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed."

Enforcement of the order could not conceivably effectuate the policies of the Act. The primary policy of the Act is to promote collective bargaining in order to restore equality of bargaining power between employers and employees so that certain obstructions to the free flow of commerce can be eliminated or at least mitigated (Section 1 of the Act). "The Act contemplates the making of contracts with labor organizations. That is the manifest objective in providing for collective bargaining." *Consolidated Edison Company of New York et al. v. National Labor Relations Board, supra.* With respect to the petitioner's authority to order affirmative action, this Court, in the case just cited, said:

"* * * We think that this authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices, even though the Board be of the opinion that the policies of the Act might be effectuated by such an order."

Assuming that the respondent did refuse to bargain with the Union, we respectfully submit that the order to reinstate the strikers is punitive, would not effectuate the policies of the Act, and should not be enforced. We have heretofore shown that the strike of March 23, 1935 was in violation of a collective bargaining agreement. We have likewise shown that the respondent offered to take all of the strikers back without discrimination and that many of them did return to work between July 23, 1935 and the second week of September, 1935. Is not the reinstatement order obviously punitive? The respondent had not refused to take the strikers back as the peti-

tioner well knew. If the respondent had discharged men in violation of the Act, or had illegally refused to take back strikers, an order to reinstate the men involved would be clearly remedial, for that would correct the wrong done to the men. Where the wrong is a refusal to bargain with the proper representative, the remedy should be an order to bargain with the proper representative at the time of the order. It is clearly a punishment to order reinstatement of strikers who did not choose to return to work when they had the opportunity to do so, and when the only wrong alleged is a refusal to bargain with them. The wild assumption (R. bottom of page 391, top of page 392) upon which the petitioner attempts to justify the order, as we have shown, indicates its impropriety: its condemnation is completed by the fact that it does not right a wrong, but imposes an unreasoning and revengeful punishment.

The petitioner cites several cases at pages 35 and 36 of its brief to support its argument that reinstatement of the strikers was the appropriate relief to order in this case. All of the cases cited can be distinguished from the instant case, and we submit, do not indicate that the reinstatement of the strikers would here be appropriate.

In *Black Diamond S. S. Corp. v. National Labor Relations Board*, 94 (2d) 875 (C. C. A. 2d, 1938), in addition to a refusal to bargain, there was an improper refusal to reinstate the strikers upon a termination of the strike. The relief there ordered was appropriate, as it was a correction of a situation caused by the employer, but the case is no authority for the decision of a case in which there was no improper refusal to reinstate strikers.

National Labor Relations Board v. Remington Rand, Inc., 94 F. (2d) 862 (C. C. A. 2d, 1938), like-

wise is inapplicable to the present case. In that case the strike resulted from the employer's refusal to bargain. Reinstatement of the strikers was appropriate relief because the effect of the order was to correct a situation directly traceable to the respondent's conduct.

An examination of the opinion in *Jeffery-DeWitt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th, 1937), indicates that the Court there was influenced by the fact that the refusal to bargain prolonged the obstruction to commerce—the employer was not able to obtain a full quota of employees. However, it apparently was not argued that reinstatement was not appropriate relief, as the Court did not consider the petitioner's order there from that standpoint. Had the argument been made, we feel that a different result would have been reached. In addition, in that case the strikers were not out of work as a result of their breach of contract; the strike resulted when contract negotiations broke down. Furthermore there was a clear refusal to bargain which does not exist in the case at bar.

The enforcement of the reinstatement order in *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th, 1937), likewise fails to support the argument that reinstatement of the strikers here is an appropriate remedy. In that case, the strike was at least in part due to the fact that the employer there met with the union only to conceal its actual refusal to bargain. There was no contract in effect in that case; the employer's refusal to bargain having prevented the arrival at any agreement. Moreover the strikers were refused reinstatement after the strike unless they signed so-called "yellow dog" contracts. That was an illegal qualification upon the offer of reinstatement, which offer, in addition, was only to be open for

a few days. The natural result of the employer's conduct was to keep a large number of the strikers from returning to work, so that an order of reinstatement was needed to remove the effect of the respondent's conduct—an effect not primarily the result of a failure to bargain, but rather of a practical refusal to reinstate those entitled to return to work.

National Labor Relations Board v. Biles Coleman Lumber Co., 98 F. (2d) 18 (C. C. A. 9th, 1938), is the last case cited by the petitioner on this point. That case involved a strike that resulted directly from the employer's refusal to bargain with a union. The men having left their jobs because of the refusal to bargain, reinstatement of the strikers was necessary to right the wrong committed by the employer, and hence was appropriate relief.

Another consideration merits attention in this connection, viz., the fact that the strikers in the case at bar would have relinquished no rights whatever under the Act, had they returned to work when work was offered. If the respondent had refused to bargain with them, charges could have been filed, a complaint issued and hearings held. If the petitioner had found a violation of the Act, it could have issued an order designed to prevent violation. But the men would have been at work all that time. *The petitioner's order encourages strikers to prolong a dispute by staying out on strike, rather than to rely upon the orderly processes of the Act.*

We now turn to what we submit is a very serious phase of the question whether the reinstatement order would effectuate the policies of the Act. We here concern ourselves with a consideration of the effect of reinstating strikers who wilfully violated their collective

bargaining agreement. How can the petitioner carry out the purpose of Congress in passing the Act by saying to the tens of thousands of employees now working under collective bargaining agreements with their employers, "If you are not satisfied with the conditions you have agreed to, and would like some other conditions, we will protect you in the event that you strike, for if we can find that your employers have committed any violations of the Act whatever, we will order them to reinstate you in case you lose your strike"? We submit that when the petitioner's order is read in view of the facts of this case, it directly encourages violation of contracts and seriously tends to nullify the beneficial purposes of the Act. The mere statement in the petitioner's brief at page 40, that, "The contention is without merit," is no answer to such a serious charge.

We do not question the proposition advanced by the petitioner at page 36 of its brief, to the effect that the affirmative relief to be ordered is a matter for it to determine in its "judgment and discretion." We do, however, insist that the petitioner's "judgment and discretion" are subject to the limitation that the relief ordered be remedial and not punitive. As we have shown, the relief here ordered, viz., reinstatement of the strikers, is punitive, and hence exceeds the aforesaid limitation.

It should be noted, we think, that the petitioner has sought to excuse the strikers by saying that the strike, at most, was a technical breach of contract which they believed the respondent was breaching (Petitioner's brief, page 38). The appellation "technical" does not make the strike any less serious a breach. To say as the petitioner does, at page 40 of its brief, that an employer has various familiar remedies against breaches of contract to which he may resort to prevent employee actions which might promote industrial strife, is to evade

the question. The question is not, "what can an employer do when his workers violate their collective bargaining agreement?" The question is "Should the petitioner enter an order that will encourage workers to violate their agreements?" If the reinstatement of the strikers in this case would remove the effects of an unfair labor practice, enforcement of the order might possibly be worth the great risk. But, since the order is merely to punish the respondent, and rights no wrongs resulting from any unfair labor practice, the petitioner must not prevail.

The time element in this case is also one that deserves the attention of this Court. As we have indicated elsewhere in this brief, it is nearly four years since the men went out on strike, and nearly three and a half years since they could have returned to work. The reinstatement of the strikers will require the discharge of men who have worked for the respondent since July 1935, to make room for men who voluntarily left their jobs four years ago and then refused to accept them back nearly three and a half years ago. This Court well knows that industrial processes are constantly changing with the introduction of new methods, machines and products. The reinstatement of the strikers at this time, even though once justified, would be unwarranted now when the probable effect would be a serious disruption of the respondent's business, inasmuch as the petitioner has been responsible for the undue delay in bringing this case before the Court below, and now before this Court.

We now turn to consider whether the second part of the order, viz., the "cease and desist" provision, will effectuate the policies of the Act. We have already shown that the order was improper because the peti-

titioner did not know in February 1936 whether the Union represented a majority of the respondent's employees. Certainly at this late date, no one knows whether the Union represents a majority of the respondent's employees, and this is true, even assuming that the respondent had reemployed all the strikers directed to be reinstated.

We submit that the enforcement of the order, far from effectuating the policies of the Act, would lead to confusion and discord. What the petitioner should have ordered, we submit, was an election to determine the proper representative, with a provision, assuming that the respondent had refused to bargain with the Union, to cease and desist from refusing to bargain with the representative selected by the employees in the election. Enforcement of the petitioner's order could very easily lead to trouble, and it is practically certain to deny the respondent's employees the right to bargain collectively with the respondent through representatives of their own choosing.

Conclusion.

It is respectfully submitted that the judgment of the Court below denying enforcement to the petitioner's order, was entirely proper, both for the reasons stated in its opinion and for the additional reasons stated hereinabove, and should therefore be affirmed.

Respectfully submitted,

EARL F. REED,

OTTO A. JABUREK,

CHARLES M. THORP, JR.,

Attorneys for Respondent.

2812 Grant Building,
Pittsburgh, Pa.

APPENDIX.**Respondent's Exhibit No. 13.****ENAMELING & STAMPING MILL EMPLOYEES****Union No. 19694****TERRE HAUTE, INDIANA.**

2335 North 12th St.
Terre Haute, Ind.
January 1, 1935.

Columbian Enameling & Stamping Co.,
Mr. Werner Grabbe, Gen. Mgr.

Dear Sir:

It is the wish of your employes represented by Union #19694 that you meet the representative committee of that body at your earliest convenience.

Matters to be discussed are in substance:

- (1) Condition of unrest and its alleviation,
- (2) Production loss, causes and partial elimination thereof,
- (3) An earned partial wage increase.

Yours truly,

M. G. HEUER,
Chairman.

Petitioner's Exhibit No. 4.

ENAMELING & STAMPING MILL EMPLOYEES

Union No. 19694

TERRE HAUTE, INDIANA.

1518 Beech St.
Terre Haute, Ind.
June 7, 1935

Mr. C. B. Gorby, Pres.
Columbian Enameling & Stamping Co.,
Terre Haute, Ind.

Sir:

The members of Local Union #19694 have been and are desirous of meeting the management in a sincere effort to come to some satisfactory termination of the controversy existing between the employees and management of your company.

Our representative, Mr. T. N. Taylor, has attempted to arrange a conference with the representatives of your company but without success. A group of public-spirited men, representing the Terre Haute Chamber of Commerce, the churches, the press, and labor, have been requested to arrange a conference between the management and the employees but have as yet been unsuccessful.

Our membership is convinced that no controversy is so great that cannot be settled across the conference table. A prolonged labor conflict is expensive to the company, the employees and the public generally, and with this thought in mind, we hereby request the representatives of the company to meet with the undersigned at 2:00 P. M., Saturday, May 8, at any place designated by you for the purpose of starting and continuing conferences until a satisfactory settlement has been reached.

Trusting your company will comply with this request in the interest of all concerned and for the betterment of Terre Haute, we are,

Scale Committee

L. G. BROWN
M. G. HEUER
OTIS COX.

Petitioner's Exhibit No. 5.

ENAMELING & STAMPING MILL EMPLOYEES

Union No. 19694

TERRE HAUTE, INDIANA.

September 20, 1935

Columbian Enameling And Stamping Co. Inc.
Mr. C. B. Gorby, Pres.

Dear Sir:

Acting in behalf of the Enameling & Stamping Mill Employees Union #19694 I am taking the liberty of asking you to arrange a meeting between representatives of the aforesaid organization and the Columbian Enameling & Stamping Co., for the purpose of trying to effect an amicable termination of the controversy that seems to exists between the two above named parties.

If such a meeting is agreeable to you and your fellow-directors, may I suggest that you notify us on or before Sept. 24th, designating the time and place such a meeting may be held.

Hoping for an early and favorable reply, I beg to remain

Respectively Your's

OTIS COX,

Acting Secretary
Enameling & Stamping Mill Employees

[SEAL]

Union #19694

Petitioner's Exhibit No. 6.

ENAMELING & STAMPING MILL EMPLOYEES

Union No. 19694

TERRE HAUTE, INDIANA.

**415 N. 14th St.
Terre Haute, Ind.
October 11, 1935**

**Mr. C. B. Gorby, Pres.,
Columbian Enameling & Stamping Co.,
Terre Haute, Ind.**

Dear Sir:

For almost seven months a controversy has existed between the Management and the employees of the Stamping Company. This misunderstanding has been expensive to the workers and, no doubt has been expensive to the Company. The workers have lost thousands of dollars that could have been theirs through pay envelopes had this controversy not occurred. The company could have maintained their regular output, continued friendly business relations and at least a small profit on their products. This controversy has been costly to both employer and employee. Granting that both sides have made mistakes we feel that the longer it continues the more both loses.

With this thought in mind we ask you, as representing one side of the controversy, to meet with the undersigned for the purpose of trying as real men should to bring about some kind of termination of the controversy.

We assure you that if you will consent to meet with us we will meet with an open mind ready and willing to cooperate with the management in bringing prosperity to the company and return pay checks to the workers.

Appendix.

We are sincere when we say to you we desire an early meeting with your Officers as we are thoroughly convinced that the termination of this controversy will relieve the tension in Terre Haute, thereby bringing more prosperity to the City as well as a direct benefit to both parties to this controversy.

Trusting we may have the pleasure of meeting with you in the near future, we are

Sincerely yours,

L. G. BROWN
M. G. HEUER
OTIS COX.

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FILE COPY

- Supreme Court, U. S.
FILED

JAN 6 1939

~~WALTER E. LEONARD~~ CROPLEY
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1938.

No. 229.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

COLUMBIAN ENAMELING AND STAMPING
COMPANY, INC.,

Respondent,

HARRY HIATT, JOHN H. OSBORNE, EDWARD J. GEORGE,
RAYMOND ALCORN, JOHN WHITLOCK, CLARENCE
BAKER et al., Employees of COLUMBIAN ENAM-
ELING AND STAMPING COMPANY, INC.,

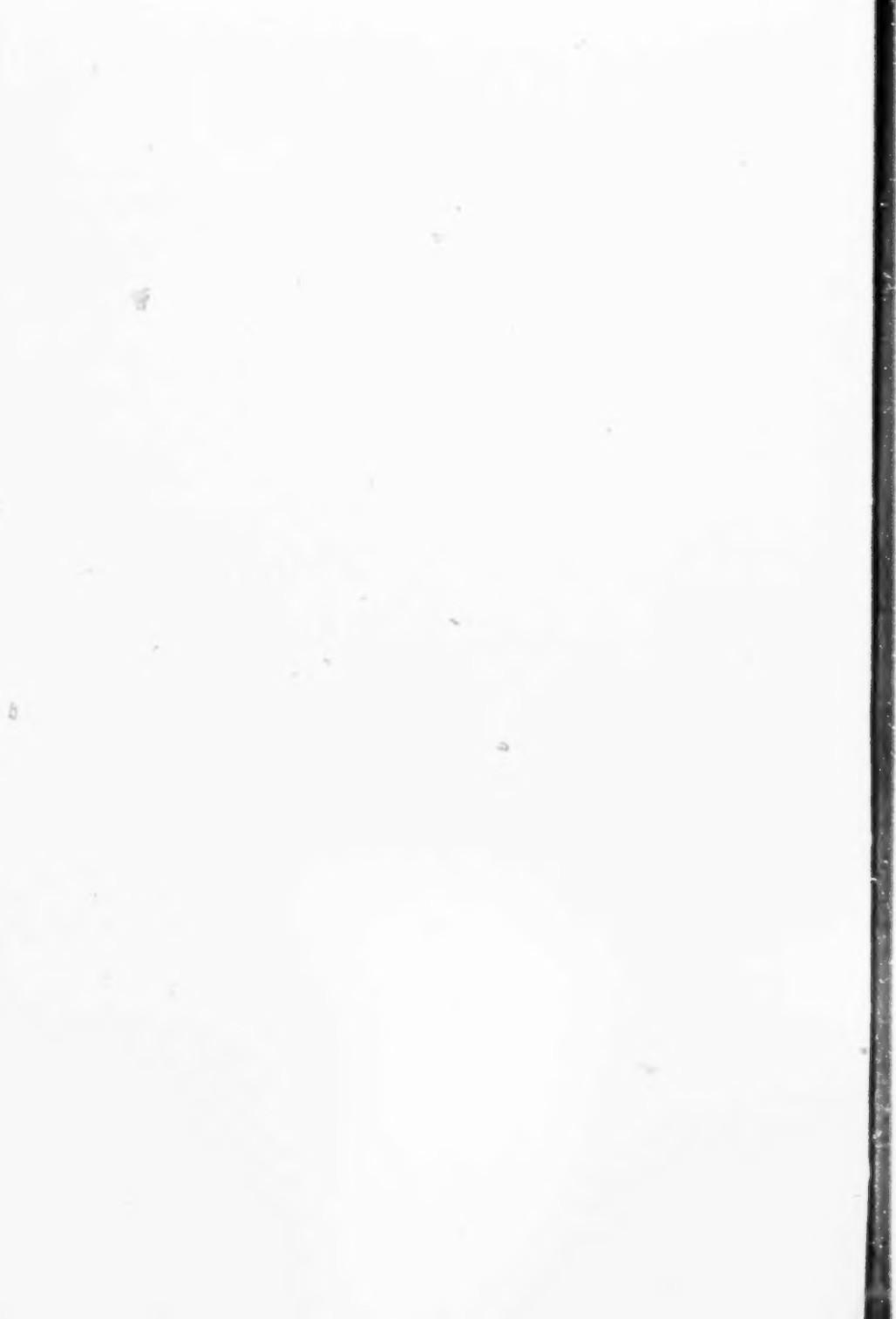
Respondent,

Intervenors.

On Writ of Certiorari to the United States Circuit Court of
Appeals for the Seventh Circuit.

BRIEF OF INTERVENERS.

PAUL R. SHAFER,
801 Sycamore Bldg.,
Terre Haute, Indiana,
Attorney for Intervenors.



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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1938.

No. 229.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

COLUMBIAN ENAMELING AND STAMPING
COMPANY, INC.,

Respondent,

HARRY HIATT, JOHN H. OSBORNE, EDWARD J. GEORGE,
RAYMOND ALCORN, JOHN WHITLOCK, CLARENCE
BAKER et al., Employees of COLUMBIAN ENAM-
ELING AND STAMPING COMPANY, INC.,

Respondent,

Intervenors.

On Writ of Certiorari to the United States Circuit Court of
Appeals for the Seventh Circuit.

BRIEF OF INTERVENERS.

OPINION BELOW.

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit, the court below, appears in the record at pages 415 to 425, and is reported in 96 F. (2) 948. The decision of the National Labor Relations Board, petitioner, appears in the record at pages 372 to 393.

JURISDICTION.

The judgment of the court below denying enforcement of petitioner's order, was entered on April 28, 1938. The petitioner filed the present petition on July 28, 1938, and certiorari was granted on October 10, 1938. The jurisdiction of this Court is based upon Section 240 (a) of the Judicial Code, as amended, and Section 10 (e) of the National Labor Relations Act.

STATUTE INVOLVED.

The statute involved herein is the National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449, 29 U. S. C. A., Section 151 et seq.), to which reference will be made from time to time in the argument.

The sections of the act pertinent to interveners herein are set out in appendix A, infra.

QUESTIONS PRESENTED.

1. Whether the interveners were accorded due process of law by the petitioner.
2. Whether the petitioner has authority to order the discharge of the interveners in order to make jobs for the strikers.
3. Whether the petitioner's order that the respondent cease and desist from refusing to bargain collectively with the union is proper.
4. The decision of the Circuit Court of Appeals for the Seventh Circuit denying petitioner's petition for enforcement of order of the National Labor Relations Board should be affirmed.

STATEMENT OF THE CASE.

The facts of this case, in so far as the interveners are concerned, are very simple and may be briefly stated. The interveners are employees of the respondent, Columbian Enameling and Stamping Company, Inc., and intervened in the instant case while it was pending in the court below. At the time of such intervention there were 203 interveners. The purpose for which the interveners desired to become parties in the court below was to defend themselves against the enforcement of the petitioner's order. Inasmuch as the petitioner is now asking this Court to review the refusal of the court below to enforce said order, the interveners wish to bring to the attention of this Court the impropriety of the aforesaid order as it affects them.

The respondent experienced a strike at its plant on March 23, 1935 (R. 213), called by the Enameling and Stamping Mill Employees Union No. 19694, in accordance with a strike resolution (Petitioner's Exhibit 2) to the effect that the members of the union would not continue to work with nonmembers. After a complete suspension of operations the respondent opened its plant on July 23, 1935 (R. 238), taking back strikers without discriminating against them because of the strike (R. 140), and many strikers did go back to work (R. 242). On July 23, 1935, and shortly thereafter, many of the aforesaid interveners became employees of the respondent and have continued in that relationship ever since.

On October 31, 1935, Otis Cox, secretary of the Union, filed a charge with the National Labor Relations Board against the respondent (R. 5-7). On November 21, 1935, the National Labor Relations Board issued a complaint against the respondent (R. 7-10), and, after an answer was

filed by the respondent (R. 11-18), a hearing was held on the aforesaid complaint, which hearing commenced on December 9, 1935, and ended on December 11, 1935. None of the interveners was given any notice of the proceedings above mentioned, had no opportunity to appear therein, and were not represented in any of said proceedings.

On February 14, 1936, the National Labor Relations Board issued the following order:

“On the basis of the findings of fact and conclusion of law and pursuant to Section 10, subdivision (e) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, the Columbian Enameling & Stamping Company, and its officers and agents, shall take the following action, which the Board finds will effectuate the policies of the Act:

“1. Discharge from its employment all production employees who were not employed by it on July 22, 1935, and reinstate to the vacancies so created individuals who were so employed and have not since received substantially equivalent employment elsewhere and place the remainder of such individuals on a list to be called for reinstatement as and when their labor is needed.

“2. Upon reinstating its employees as required in paragraph 1 of this order, shall cease and desist from refusing to bargain collectively with Enameling & Stamping Mill Employees Union, No. 19694, as the exclusive representative of the production employees employed by respondent in respect to rates of pay, wages, hours of employment and other conditions of employment.

“3. File with the National Labor Relations Board on or before the thirtieth day from the date of service of this Order, a report in writing setting forth in detail

the manner and form in which it has complied with the foregoing requirements.

“Signed at Washington, D. C.

“This 14th day of February, 1936.

J. Warren Madden,
Chairman,

John M. Carmody,
Member,

Edwin S. Smith,
Member,

National Labor Relations Board.”

The order was based principally on the finding that the respondent refused to meet with certain conciliators of the United States Department of Labor and a committee of the union a few days after July 23rd or 24th, 1935 (R. 386). The aforesaid refusal was considered by the Board to be a violation of Section 8, Subdivision (5) of the National Labor Relations Act in that it constituted a refusal by the respondent to bargain collectively as required by said act and hence was an unfair labor practice.

Said National Labor Relations Board filed a petition in the court below asking for enforcement of the aforesaid order on July 9, 1937. The court below refused to enforce said order and found, among other things, that the aforesaid strike of March 23, 1935, was in violation of a contract between the aforesaid union and the respondent (R. 423), so that the strikers ceased to be employees of the respondent on March 23, 1935 (R. 420).

One hundred twenty-nine (129) of the interveners herein became employees of the respondent between July 23, 1935, and December 9, 1935, the date the hearing commenced as

aforesaid. Seventy-four (74) of the interveners herein have become employees of the respondent since February 14, 1936, the date the aforesaid order was issued. The first paragraph of the petitioner's order requires the respondent to discharge all of the interveners so that the strikers may be given the jobs now held by the interveners.

SUMMARY OF THE ARGUMENT.

POINT I.

THE FIRST PARAGRAPH OF THE PETITIONER'S ORDER IS INVALID FOR THE REASON THAT IT DEPRIVES THE INTERVENERS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

A.

The Fifth Amendment to the United States Constitution Enjoins the Federal Government From Depriving a Person of His Property Without Due Process of Law: A Man's Job Is Property Within the Protection of the Constitution.

It is elementary that neither Congress nor any other federal agency may deprive a person of his property without according to him such consideration as is designated in the Fifth Amendment to the Constitution by the term "due process of law." The occupation by which one makes his living is considered "property" within the meaning of the Fifth Amendment. (**Ex Parte Wall**, 107 U. S. 265 [1883].)

B.

The Interveners Who Became Employees of the Respondent Prior to December 9, 1935, Were Entitled to Notice of the Hearing Held by the Petitioner, and Should Have Been Given an Opportunity to Be Heard in Said Proceedings.

It must be assumed that the petitioner contemplated that the result of the hearing it held might deprive the interveners of their property rights inasmuch as the order it issued does have that effect. It follows, therefore, that the interveners were entitled to notice of the hearing and an opportunity to appear therein to protect their rights. A fair hearing is an integral part of due process of law. **Morgan v. United States**, 58 S. Ct. 773, at 777 (1938). Notice and a fair hearing cannot be denied the interveners on the ground that their employment with the respondent was subject to regulation by the Federal Government. The interveners had no notice that the jobs they accepted with the respondent were in jeopardy.

POINT II.

THE FIRST PARAGRAPH OF THE PETITIONER'S ORDER EXCEEDS THE AUTHORITY CONFERRED UPON THE PETITIONER BY THE NATIONAL LABOR RELATIONS ACT.

A.

The Order Is Too Broad in That It Requires the Respondent to "Reinstate" Strikers, Not to Their Former Jobs, But to the Vacancies Created by Discharging the Interveners.

Under the terms of the National Labor Relations Act, Section 10, the petitioner may order the **reinstatement** of

employees. Assuming that the strikers are employees, the most that the petitioner could order in the case at bar is that the respondent reinstate the strikers to the positions they formerly held.

The petitioner in other cases has ruled that a striker or a person discriminatorily discharged need not accept his employer's offer of a different job from that which he formerly held. The rule should work both ways.

B.

The Order Is Too Broad in That It Requires the Discharge of Interveners Hired Before the Alleged Refusal to Bargain.

This Court has held that the petitioner may not order the reinstatement of strikers whose jobs were filled prior to the commission of an unfair labor practice. **National Labor Relations Board v. Mackay Radio & Telegraph Co.**, 304 U. S. 333 (1938).

C.

The Order Is Too Broad If It Is Interpreted to Require the Discharge of Those Interveners Who Were Hired by the Respondent After February 14, 1936.

The petitioner necessarily could make no finding that the interveners hired after the date of its order occupied positions formerly held by strikers. There is, therefore, no basis upon which the petitioner could interfere with the employment of the aforesaid interveners.

D.

The Order Unjustly Punishes the Interveners and Should Not Be Enforced.

The petitioner may not issue an order that is punitive. The order in the instant case is punitive rather than

remedial, as it imposes undue hardship on the interveners and does not correct any situation for which either the respondent or the interveners are responsible.

POINT III.

THE SECOND PARAGRAPH OF THE ORDER DENIES THE INTERVENERS THE RIGHT TO PARTICIPATE IN THE SELECTION OF THEIR REPRESENTATIVES FOR COLLECTIVE BARGAINING PURPOSES.

The interveners, as employees of the respondent, are entitled under the National Labor Relations Act to bargain with the respondent through representatives of their own choosing. The order imposes upon the interveners a representative selected by the petitioner, rather than a representative in the selection of which the interveners have participated.

POINT IV.

THE DECISION OF THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT DENYING PETITIONER'S PETITION FOR ENFORCEMENT OF ORDER OF THE NATIONAL LABOR RELATIONS BOARD SHOULD BE AFFIRMED.

Upon review, all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of constitutional right or statutory authority, are open to examination by the Court.

Myers v. Bethlehem Ship Building Corp., 303 U. S. 41, 58 Sp. Ct. 459—1938.

If the petitioner is entitled to invoke the equity powers of a court to secure reinstatement of a contract violated by one group of employees, the same equity court has power to decree equity between all parties before it.

ARGUMENT.

POINT I.

THE FIRST PARAGRAPH OF THE PETITIONER'S ORDER IS INVALID FOR THE REASON THAT IT DEPRIVES THE INTERVENERS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

1. The argument herein made by the interveners is made on the assumption that the strikers were employees on and after July 5, 1935. The assumption, however, is made only for the sake of argument, for the interveners are in complete accord with the decision of the court below that the strikers ceased to be employees when they struck in violation of their contract.

A.

The Fifth Amendment to the United States Constitution Enjoins the Federal Government From Depriving a Person of His Property Without Due Process of Law; A Man's Job Is Property Within the Protection of the Constitution.

It cannot successfully be denied that the Constitution, in the Fifth Amendment, limits the Federal Government, of which the petitioner is an agency, in its exercise of the power to deprive persons of their property. The specific restriction upon the exercise of such power is that the power be exercised in accordance with the concept of due process of law. It further cannot be denied that one's occupation, whether it be the practice of one of the learned professions or the doing of manual labor, is property

within the meaning and protection of the Fifth Amendment. **Ex Parte Wall**, supra.

B.

The Interveners Who Became Employees of the Respondent Prior to December 9, 1935, Were Entitled to Notice of the Hearing Held by the Petitioner, and Should Have Been Given an Opportunity to Be Heard in Said Proceedings.

The petitioner must be deemed to have known of the fact that certain of the interveners were employed by the respondent prior to the dates upon which the complaint was filed and the hearing commenced in the instant case. Furthermore, on those dates the petitioner must be deemed to have known that its proceedings might affect the rights of the interveners. On February 14, 1936, the petitioner certainly knew that its order, if carried out, would deprive the aforesaid interveners of their property. The petitioner ignored the prohibition of the Fifth Amendment by issuing its order without affording a hearing to the interveners. In a situation such as is found in the instant case, due process of law includes a hearing in which those who are to be affected by the petitioner's action may present their case. Although not a case arising under the National Labor Relations Act, the recent decision of this Court in **Morgan v. United States**, supra, compels such a conclusion.

The necessity of affording the interveners a hearing cannot be escaped from on the ground that the interveners were bound to know that when they accepted their jobs with the respondent they were charged with notice that their employment was subject to regulation by the petitioner. The record is clear that the respondent imposed

no discriminatory conditions upon strikers when it opened its plant on July 23, 1935. The strikers and the interveners were upon an equal footing in applying for jobs. Assuming that some of the interveners hired between July 23, 1935, and the date of the hearing were hired after the commission of an unfair labor practice by the respondent, it was an act of which the interveners had no knowledge, and they should not be affected thereby. The recent decision of this Court in **Consolidated Edison Co. of New York et al. v. National Labor Relations Board**, No. 19, October Term, 1938, is applicable here. In that case it was held, *inter alia*, that the validity of the collective bargaining contracts between the companies and the unions could not be determined by the Board because the contracts were not put in issue by the complaint. For the same reason, even assuming that the interveners had notice of the hearing, the validity of their contracts could not be determined by the Board, for their employment contracts with the respondent were not assailed by the complaint and no issue as to the validity thereof was litigated.

POINT II.

THE FIRST PARAGRAPH OF THE PETITIONER'S ORDER EXCEEDS THE AUTHORITY CONFERRED UPON THE PETITIONER BY THE NATIONAL LABOR RELATIONS ACT.

The petitioner is empowered, upon finding that an employer has committed an unfair labor practice, to order the employer to take affirmative action including reinstatement of employees with or without back pay [Section 10 (c) of the National Labor Relations Act]. The order, quoted above at page 4, requires, in the first paragraph thereof, that the respondent discharge the persons em-

ployed by it since July 22, 1935, and reinstate to the vacancies so created those strikers who did not return to work when the respondent opened its plant on July 23, 1935. Whether the order requires the discharge of all persons hired by the respondent for the first time since July 22, 1935, or only so many thereof as are necessary to make room for the strikers, it is submitted that the order is improper for the reason that it exceeds the petitioner's authority.

A.

The Order Is Too Broad In That It Requires the Respondent to "Reinstate Strikers Not to Their Former Jobs But to the Vacancies Created by Discharging the Intervenors.

The accepted meaning of the word "reinstate" is to instate again to a former position, or to restore one to a position from which he had been removed ("reinstate," Webster's New International Dictionary, page 1799). That is the sense in which Congress may be assumed to have used the word for the act does not define "reinstate." The first paragraph of the order does not follow the act for it contemplates the placing of strikers in the jobs now held by intervenors without regard to whether the strikers as individuals held said jobs prior to the strike of March 23, 1935.

The petitioner has held that if an employer offers a striker or a person unlawfully discharged a job other than that which he held prior to the strike or wrongful discharge, such person is not required to accept the offer as he is entitled to his former job. **In re Western Felt Works and Textile Workers Organizing Committee**, Case No. C-490, decided December 12, 1938, Labor Relations

Reporter, December 26, 1938, pages 17-21. The rule should work both ways—the petitioner should be limited to requiring an employer to give back a striker or unlawfully discharged employee his former job, and not some other job. The petitioner's order, therefore, must be limited, in argument, to the reinstatement of strikers to the jobs they formerly held, when such jobs are now held by persons hired for the first time since July 22, 1935.

If any jobs formerly held by strikers have been abolished, the respondent cannot be required to discharge any of the interveners to make room for strikers formerly holding such jobs, **National Labor Relations Board v. Bell Oil & Gas Co.**, 98 F. (2d) 405 (C. C. A. 5th, 1938), where the Court refused to punish for contempt an employer that failed to obey an order that required the reinstatement of an employee to his former job as part of a crew of three men, where, through a change in operations, the position of the former employee had been abolished.

B.

**The Order Is Too Broad in That It Requires the Discharge
of Interveners Hired Before the Alleged Refusal to
Bargain.**

The statement of the case, *supra*, at page 3, shows that the petitioner itself found that the event deemed by it to be a refusal on the part of the respondent to bargain collectively with the union took place a few days after July 23 or 24, 1935. The reinstatement of strikers is supposedly to correct the situation created by the alleged refusal to bargain. It follows that the reinstatement of strikers may not be ordered unless the positions of such strikers were filled after said alleged refusal to bargain (**National Labor Relations Board v. Mackay Radio &**

Telegraph Co., supra.) A necessary result of the **Mackay** case is that the petitioner may not under any conditions here order the discharge of any interveners hired by the respondent during the period from July 23, 1935, until a few days after July 23 or July 24, 1935. See, also, **Black Diamond S. S. Corp. v. National Labor Relations Board**, 94 F. (2d) 875 (C. C. A. 2nd, 1938). Its order is too broad and should not be enforced.

C.

**The Order Is Too Broad If It Is Interpreted to Require
the Discharge of Those Interveners Who Were Hired
by the Respondent After February 14, 1936.**

The interveners' brief in the court below advanced the argument that the order was improper in that it required the discharge of those interveners, seventy-four in number, who were hired since the issuance of the petitioner's order. Inasmuch as the petitioner did not deny that its order has such effect, the petitioner must intend that these interveners referred to should be discharged.

Since the only justification for an order that the interveners be discharged is that they hold jobs rightfully those of strikers, the order in the instant case, under the construction placed thereon by the petitioner, is obviously improper. The petitioner has not made and could not make any finding that the interveners, who became employees of the respondent after February 14, 1936, hold jobs rightfully those of strikers. On the present state of the record the petitioner's order in the respect here under discussion is entirely unjustified and should not be enforced.

The same conclusion may be reached from the standpoint of the time when the rights of employees covered

by the petitioner's orders become fixed. It has been held that an employer may not evade its obligation to reinstate an employee, imposed by an order of the petitioner, on the ground that, subsequent to the date of the order, the employee obtained equivalent employment elsewhere and thus ceased to be an employee within the meaning of the act. **National Labor Relations Board v. Carlisle Lumber Co.**, 99 F. (2d) 533, 538 (C. C. A. 9th, 1938). If an employee's rights under the act may not be cut down after the date of an order fixing his rights, for the reason that they become fixed as of such date, how can it reasonably be said that an employee's rights thus fixed can be enlarged? It is submitted that the question answers itself, and that the petitioner could not lawfully order the discharge of persons hired by the respondent after the issuance of said order.

D.

The Order Unjustly Punishes the Interveners and Should Not Be Enforced.

The authority of the petitioner to order an employer to take such affirmative action as will effectuate the policies of the act has recently been restricted by this Court to the ordering of remedial as distinguished from punitive action. **Consolidated Edison Co. of New York et al. v. National Labor Relations Board**, *supra*.

It is respectfully submitted that the order requiring the discharge of the interveners is clearly punitive. The interveners who were employed prior to the hearing were employed on the same terms available to and accepted by many of the strikers. The interveners were not in any sense "strike breakers." They availed themselves of an opportunity to go to work for the respondent and had no

notice, either actual or constructive, that the respondent had violated the National Labor Relations Act, assuming that it had. This Court, it is submitted, will not censure men for applying for and obtaining available jobs in the summer and fall of 1935, for it will take cognizance of the fact that employment of any kind was difficult to obtain during the depths of the recent depression. For the petitioner to prefer men who refused to work when they had the chance to resume employment over men who accepted employment in all good faith seems to the interveners to be highly arbitrary. When such preference is shown to men who had, prior to their refusal to accept work, quit their jobs in violation of a reasonable collective bargaining contract with their then employer, the conduct of the petitioner seems to the interveners to be both a vindictive attack on them for a condition for which they are in no sense responsible, and a far, far cry from action to be expected from an agency designed by Congress to protect them and their fellow workmen from unfair labor practices of employers, affecting commerce.

POINT III.

THE SECOND PARAGRAPH OF THE ORDER DENIES THE INTERVENERS THE RIGHT TO PARTICI- PATE IN THE SELECTION OF THEIR REPRE- SENTATIVES FOR COLLECTIVE BARGAINING PURPOSES.

Under the Act, Section 7, the interveners as employees are entitled to a voice in the selection of their representatives for collective bargaining purposes. The order, by requiring the respondent to bargain with the union, deprives the interveners of their rights, as they did not select the union as such representative. The provision of

the order just referred to, therefore, should not be enforced.

It is perhaps the intent of the petitioner that the second paragraph of the order should not be enforced unless the first paragraph thereof be enforced, because the second paragraph conditions the injunction that the respondent "cease and desist" upon the reinstatement required in paragraph one of the order. In that case, since the first paragraph of the order should not be enforced, the second paragraph should likewise be set aside.

The second part of the order is in violation of Section 9 (a) of the Act, in that said second paragraph of the order denies the interveners as employees to designate representatives or to select representatives for the purposes of collective bargaining, in that the second paragraph of the order directs that the respondent shall cease and desist from refusing to bargain collectively with Enameling and Stamping Mill Employees Union No. 19,694 as exclusive representatives of the production employees in respect to rates of pay, wages, hours of employment and other conditions of employment. It does not permit the interveners herein, who constitute a majority of the employees, to select representatives for the purpose of collective bargaining, which representatives, if selected by the interveners herein, employees of the respondent, are to be the exclusive representatives of the interveners herein for the purpose of collective bargaining in respect to rates of pay, wages and hours of employment, or other conditions of employment, as is provided in Section 9 of the Act. The said paragraph two of the order aforesaid would deny representatives of the interveners herein, when selected, of the right to bargain collectively with the respondent.

POINT IV.

THE DECISION OF THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT DENYING PETITIONER'S PETITION FOR ENFORCEMENT OF ORDER OF THE NATIONAL LABOR RELATIONS BOARD SHOULD BE AFFIRMED.

This Court has held, in *Myers v. Bethlehem Ship Corporation*, *supra*, that, upon review by a Circuit Court of Appeals, all questions relative to the jurisdiction of the Board, the regularity of its proceedings and all questions of constitutional rights or statutory authority are open for examination by the Court. The court below, therefore, had a right to inquire into the regularity of the proceedings before the National Labor Relations Board to determine as to whether the facts found by the Board supported the order that was made by the Board and whether or not the evidence supported the finding of the Board, and whether or not the order as so entered by the Board was within the scope of the regularity provisions of the act. This was the function of the Circuit Court of Appeals when the petitioner herein filed its petition to enforce the order of the National Labor Relations Board. This contention is supported by the decision of the Circuit Court of Appeals for the Fifth Circuit in *National Labor Relations Board v. Bell Oil & Gas Company*, 91 F. (2d) 509.

The court below, upon review, was enjoined with the duty of inquiring into the regularity of the proceedings, the further duty to ascertain as to whether the facts found by the Board supported the order and the evidence supported the finding, and, in doing so, they must take into consideration the fact that the petitioner herein, who invoked the equity powers of the Court to secure the rein-

statement of the members of the Stamping Mill Employees Union No. 19694 under a contract of employment that had been violated by them, that this same court had power to decree equity between the interveners herein and the respondent and the members of said Local Union. Equity being thus invoked, the public interests were controlling upon this court of equity in that the Court might determine as against a group of employees who came into the court with a contract that had been violated by them, as was found by the court below, who chose to remain idle when an opportunity was offered them to work on equal basis with the interveners, and they refused, as against the interveners herein, who feel that their right to work should not be taken away from them and they should not be thrown out of a peaceful employment, and the Court, in choosing as between a group of employees who came into equity with unclean hands and a group of individuals who came in with clean hands, the order of enforcement as against the interveners herein could not be enforced.

It is the well established law that a court of equity, having jurisdiction of the parties and the subject matter, will make its jurisdiction effectual for complete relief. Ober v. Gallagher, 93 U. S. 199. And when its jurisdiction has been invoked for any equitable purpose, the Court will proceed to determine any other equities existing between the parties connected with the main subject of the suit, and grant all relief necessary to an entire adjustment of said subject. Gromley v. Clark, 134 U. S. 338, 10 Sp. Ct. 554.

It is the general principle of equity laid down by this Court and many other courts of federal jurisdiction, too well known to comment upon, that a decree affecting absent parties is unauthorized. The interveners herein were not parties to the action. They did not become parties

until permission was granted them to intervene in the court below. One hundred and twenty-nine of the interveners herein became employees of the respondent between July 23, 1935, and December 9, 1935, being the date the hearing commenced aforesaid. Seventy-four of the interveners herein have become employees of the respondent since February 14, 1936, the date the aforesaid order was issued. All of the interveners herein were employees of the respondent corporation at the time of the decision rendered by the court below.

Appendix B sets out the group of employees who have become employees since February, 1936, and all other employees mentioned in Appendix C in the joinder in said petition became employees of the respondent corporation since July 23, 1935.

Interveners herein most seriously contend that their right to work, to enjoy the fruits of their labors, to work in harmony with the respondent, is a superior right than the right of the striker, who violated his contract and destroyed the property of his employer, in that the record discloses that the striker causes loss amounting from \$2,500.00 to \$5,000.00 per month to the respondent employer by reason of spoiled ware, and that the purpose of the act is to promote peace and harmony between employer and employee rather than strife, bitterness, hatred and misunderstanding, and that the petitioner who came into the court of equity to enforce the order on behalf of the strikers must comply with the rules of equity, that is, they must come in with clean hands and a pure conscience, and that equity will not permit them to derive a benefit by reason of their breach of duty and obligation, and, to the contrary, equity should and will grant to the interveners herein the privilege to enjoy unmolested that position they seek to protect.

CONCLUSION.

The interveners respectfully submit that the order of the petitioner involved in the case at bar was properly denied enforcement by the court below, for the reason that the strikers, whose reinstatement, at the expense of the interveners, is sought by the petitioner, ceased to be employees when they struck. It is also respectfully submitted that the order aforesaid is invalid, and was properly denied enforcement by the court below, for the reason that it deprives the interveners of their property without due process of law, and for the further reason that it exceeds, in its entirety, the authority of the petitioner under the National Labor Relations Act.

Respectfully submitted,

**PAUL R. SHAFFER,
801-802 Sycamore Bldg.,
Terre Haute, Indiana,
Attorney for Intervenors.**

APPENDIX A.

The provisions of the National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449, 29 U. S. C. A., Section 151 et seq.), pertinent to interveners, are as follows:

Sec. 2. When used in this Act:

(9) * * * The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, * * *.

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 9. (a) * * * Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

APPENDIX B.

The pertinent allegations in interveners' petition to intervene in the Circuit Court of Appeals for the Seventh Circuit relative to interveners' employment with reference to the date of the order of the National Labor Relations Board is as follows:

6. These petitioners further aver that the following employees, to wit: Homer Arney, James Cooper, Clyde McConkey, Harold Olker, J. T. Crume, William Hamilton, William Lamb, Hubert Coleman, Kathleen Campbell, Jack Payne, Claude Burke, Warren Chickadaunce, Lillian Humphrey, Arthur Tayler, R. G. Wood, M. E. Brown, Paul LeConte, Clifford Miley, E. E. Fried, Donald Woodruff, W. W. Ferguson, R. H. Malone, Bert White, E. C. Myles, H. M. Benton, H. L. Boyd, Fred Doss, V. M. Kester, H. T. Scott, Berlen Boyle, E. G. Welch, C. L. Gordon, C. B. Wright, F. D. Pugh, H. J. Rickelman, J. R. Sturgell, L. E. Collins, M. F. Hajdu, Harry Hiatt, Homer Crady, Leon Blakely, Harold Chamberlain, Ray Chamness, H. D. Coleman, W. V. Lindholm, Dale Myers, M. T. Petzold, H. E. Higginbotham, Russel Minger, Louis Burgess, John Tanner, Herman Redman, Leroy Nevins, G. P. Schell, Bert Roberts, S. S. Mullikin, Martin Thompson, Ralph Hodges, C. A. Arnold, Helen Anderson Fried, B. M. Geiselman, R. C. Fox, Roy Perkins, G. R. Cramer, Hermine Fields, C. C. Adkins, E. B. Sharpe, Homer Gray, M. E. Sexton, J. W. Cooper, G. A. Mitchell, Fred Smith, H. J. Myers, Kenneth Meneely, C. E. Ellenberger, H. E. Day, D. C. Pickett and M. F. Camp, have become employees of the respondent Columbian Enameling & Stamping Company, Inc., since the entering of said order by the petitioner, National Labor Relations Board, on the 14th day of February, 1936, and this is the first oppor-

tunity that these petitioners have had to file this petition to intervene in this cause, and they have just learned of the pendency of said cause of action, in that on the 14th day of February, 1936, they were not then and there employees of the respondent, Columbian Enameling & Stamping Company, Inc.

7. That these petitioners, and all other employees of respondent similarly situated except those persons mentioned in paragraph identified 6 above, were in the employ of the respondent, Columbian Enameling Company, Inc., from and on the 9th day of December, 1935, and to the 14th day of February, 1936, as aforesaid (R. 408-409).

APPENDIX C.

The joinder of employees of the respondent so filed in the Circuit Court of Appeals for the Seventh Circuit (omitting the caption) is as follows:

Joinder in Petition.

We, the undersigned, being employees of Columbian Enameling & Stamping Company, Inc., the respondent in the above entitled proceedings hereby state and declare that our situation is similar to that of the Petitioners in the foregoing petition, in that we have become employees of the respondent Company since July 22, 1935, and our employment is therefore, seriously affected and threatened by the order of the National Labor Relations Board, sought to be enforced herein, which order is as follows:

On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, the Columbian Enameling & Stamping Company, and its officers and agents, shall take the following action, which the Board finds will effectuate the policies of the Act:

1. Discharge from its employment all production employees who were not employed by it on July 22, 1935, and reinstate to the vacancies so created individuals who were so employed and have not since received substantially equivalent employment elsewhere and place the remainder of such individuals on a list to be called for reinstatement as and when their labor is needed.

2. Upon reinstating its employees as required in paragraph 1 of this order, shall cease and desist from

refusing to bargain collectively with Enameling & Stamping Mill Employees Union, No. 19694 as the exclusive representative of the production employees employed by respondent in respect to rates of pay, wages, hours of employment and other conditions of employment.

3. File with the National Labor Relations Board on or before the thirtieth day from the date of service of this Order, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

And we desire to join and do hereby join the Petitioners in their averments and prayers of their petition.

John H. Osborne, Dorval D. Bailey, F. W. Murphy, J. S. McCrory, A. J. Hogar, H. C. Scott, B. F. Paver, L. E. Scott, L. T. Brady, R. L. Jenks, E. G. Hoare, H. B. Sparks, Earl Walker, Stanley H. Jones, William Hamilton, LeRoy F. Andrews, E. W. Jones, S. S. Mullikin, L. Burgett, H. L. Coker, W. O. McBeth, A. A. Rennels, A. W. DePlanty, C. S. Miley, L. A. Newell, A. R. Stevens, L. V. Newell, N. V. Jones, O. A. Geckler, James P. Boone, T. Tanner, J. E. Tovey, H. D. Skidmore, C. H. Edward, Gordon Jackson, Roy Myers, Paul E. Wilbur, Chester L. Gordon, Joe Barnett, Clay Johnson, H. Chamberlain, W. W. Jones, A. L. Daniels, R. H. Thornton, Everett W. Creasey, Homer Gray, Mervin W. Padgett, Francis J. Wilson, Ray Chamness, Jack Payne, Warren P. Chicadaunce, Harrold Maloney, Joseph C. Smith, C. J. Herter, LeRoy Nevins, Harrel J. Rickelman, Leon R. Blakely, Martin W. Thompson, H. M. Hussong, H. L. Titus, Kenneth H. Smith, Chester Nelson, James F. Leek, William H. Lamb, R. G. Williams, M. F. Hajdu, J. A. Coffman, C. A. Arnold, H. E. Grady, H. R. Arney, Dave Andrews, F. J. Smith, M. E. Brown, Harold J. Myers, W. W. Ferguson, William Muffett, Joseph Sturgell, W. A. Casel, F. M. Camp, Dale Myers, Claude Burke, Millard E. Saxton, John

T. Crume, Clyde W. McConkey, H. E. Higginbotham, Ben Butler, Fred Doss, H. E. McFadden, R. H. Malone, H. O. Coleman, James W. Cooper, Paul V. Weeks, Herman C. Redmon, Herman Gorman, Loren Ring, George A. Mitchell, Vaughn Kester, John D. Miller, Donald Woodruff, Charles E. Ellenberger, Helen Lawson, Guy Nicles, Robert C. Fox, Rose Dragon, Helen Gaipo, William V. Lindholm, Agnes McCord, S. E. Trager, H. D. Kuhn, Gilbert H. Sexton, Estel Dalgarn, Raymond R. Denney, Harold E. Day, Larry Neale, Eva Smith, C. P. Shell, Roy Perkins, Glenn Cramer, Dottie Jones, John Urden, Chas. T. Keller, John Olwell, H. P. Came, J. R. McClean, Robert W. Belt, Walter Hill, G. F. Rice, Carl L. Belt, Henry Stott, Roger A. Winters, Bert A. Roberts, F. D. Youngen, Earl Bridgewater, Murval H. Nickles, Lyle E. Collens, C. W. Swiger, Charles L. Spore, Butis M. Gusilman, Ogle Starkey, Eugene Myers, Cala V. Stwens, C. B. Baker, Kennard Denny, Orville Smith, Don C. Maloney, Wayne Caress, Robert Bates, Robert A. Pinson, Rosemary Pattison, Martha Jane Bates, Lois Kuhn, Edwin M. Roberts, Ray Howard, Russell C. Minger, Helen Fried, Paul Gentry, Elizabeth Murray, H. G. Bailey, Walter V. Shepard, K. W. Bragg, Dorris Miller, Jewell Boyles, Irene Kosco, Raymond Wood, Elizabeth Lewis, Frank Cotton, Herbert T. Scott, M. S. Petzold, Harry Hiatt, Henry M. Benton, Roy E. Fulmer, Lawrence G. Stevenson, Arthur L. Taylor, Floyd Pugh, Paul LeComte, Byron O. Greenwood, Burlen Boyle, Kenneth L. Meneely, H. I. Thornton, Donn C. Pickett, John Whitlock, Louis Marter, E. J. George, Wayne Toling, David Service, Ralph Hodges, Justus W. Hall, Hermine Fields, Eddie B. Sharpe, Charles E. Allenbaugh, Martha Snow, Ollie B. Allenbaugh, Margaret Kennedy, John G. Bacon, Kathleen Campbell, Maxine Abram, C. B. Wright, C. A. Smith, B. White, G. A. Gardner, E. G. Welch, T. C. Simpson, Carol E. Starkey (R. 410-412).

APPENDIX D.

The pertinent allegations in interveners' answer, as filed in Circuit Court of Appeals of the Seventh Circuit (omitting the caption and jurat), are as follows:

1. The order of the petitioner, National Labor Relations Board, dated February 14, 1936, which the petitioner is asking this Honorable Court to enforce, as it affects the interveners herein, was and is contrary to law, void and of no effect, for the following reasons, among others, to wit:

(a) The petitioner had no jurisdiction over the interveners in the proceedings in which said order was made.

(b) Petitioner had no jurisdiction over the employment status of the interveners in the proceedings in which said order was made.

(c) Said order was made without any notice to the interveners herein and deprives them of their property without due process of law.

(d) Said order was made without any hearing as to the rights of the interveners and deprives them of their property without due process of law.

(e) The persons designated as members of Columbian Enameling and Stamping Company, Inc., Union No. 19,694, were not then and there employees of the respondent, Columbian Enameling and Stamping Company, Inc., on the 22nd day of July, 1935, on the 6th day of December, 1935, nor on the 14th day of February, 1936.

2. The petitioner herein, the National Labor Relations Board, does not have authority to order the employer of the interveners herein to discharge said interveners from

its employ by reason of lack of notice, hearing and for the further reason that no dispute has arisen between the employer and these interveners or any violation of the Wagner Act has taken place.

3. The petitioner, the National Labor Relations Board, has, without any justification whatsoever, arbitrarily selected the date prior to any alleged violation of the Wagner Act by the employer of the interveners as the date determinative of the rights of the interveners, many of whom were employed by the aforesaid Columbian Enameling and Stamping Company, Inc., on or prior to the date of any alleged violation of the Wagner Act, as found by the petitioner.

4. The enforcement of said order of the National Labor Relations Board did impose upon the interveners severe and unconscionable hardships for the benefit of persons who were in no way injured by said interveners who voluntarily elected to remain idle when they could have accepted employment with the aforesaid respondent, as did the aforesaid interveners.

5. That the interveners herein, or a great number of them, were in the employ of the respondent, Columbian Enameling and Stamping Company, Inc., on the 6th day of December, 1935, and had been for many weeks and immediately prior thereto, and there was and is no disagreement between the interveners and the respondent, when said hearing was had by said National Labor Relations Board, nor was there any violation of the Wagner Act by the employer of the interveners herein at any of said times aforesaid.

6. The order so made by the petitioner, under date of February 14, 1936, is void, as it deprives the interveners

herein, who are citizens of the United States, of their property without due process of law and the equal protection of law as guaranteed under the Fifth Amendment, Section 1, to the Constitution of the United States.

Wherefore, the interveners pray that this Honorable Court shall make and enter a decree setting aside the order of the National Labor Relations Board as it affects said interveners and all other just and proper relief.

Dated at Terre Haute, Indiana, this 17th day of December, 1937.

Paul R. Shafer,
Attorney for Intervenors.



SUPREME COURT OF THE UNITED STATES.

No. 229.—OCTOBER TERM, 1938.

National Labor Relations Board,
Petitioner,
vs.
Columbian Enameling and Stamping
Company, Inc. } On Writ of Certiorari to
the United States Cir-
cuit Court of Appeals
for the Seventh Circuit.

[February 27, 1939.]

Mr. Justice STONE delivered the opinion of the Court.

This petition tests the validity of an order of the National Labor Relations Board of February 14, 1936, directing respondent to discharge from its service employees who were not employed by it on July 22, 1935; to reinstate, to the vacancies so created, those who were employed on that date and have not since received substantially equivalent employment elsewhere; and to desist from refusing to bargain collectively with Enameling and Stamping Mill Employees Union No. 19694 as the exclusive representative of respondent's production employees with respect to rates of pay, wages, hours, and other conditions of employment. Unless the finding of the Board that respondent had refused to bargain collectively with the Union on July 23, 1935, is sustained by the evidence, the order is invalid.

Pursuant to a charge lodged with it by the Union, the Board issued its complaint charging respondent with unfair labor practices affecting interstate commerce within the meaning of § 8(1) and (5) of the National Labor Relations Act. 49 Stat. 449. After hearing, the Board made findings which, so far as now relevant, may be summarized as follows: Respondent corporation is engaged at Terre Haute, Indiana, in the manufacture and sale in interstate commerce of metal utensils and other products. On July 14, 1934, respondent and the Union entered into a written contract for one year, terminable on thirty days' notice, prescribing various conditions of employment. It provided that no employee should be discriminated against by reason of membership or non-membership in,

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or affiliation or non-affiliation with any union or labor organization. It also provided for arbitration, before an arbitration committee, of disputes arising under the contract, and that "There shall be no stoppage of work by either party to this contract, pending decision by the Committee of Arbitration".

Between the date of the signing of the agreement, July 14, 1934, and March 23, 1935, respondent's officers held numerous meetings with representatives of the Union, usually the Union Scale Committee, for the consideration and adjustment of various demands of the Union. At a meeting on January 4, 1935, the committee presented a number of requests, among them the demand that respondent should discharge any employees who might be suspended by the Union. This and the other demands were rejected by respondent, and a later request that the demands of January 4th be arbitrated was likewise refused on the ground that they were not arbitrable under the agreement. The committee afterward presented new demands at other meetings and then at a meeting on March 11th renewed the demands of January 4th, which respondent again rejected. On March 17th the Union passed resolutions reciting grievances and demanding a closed shop, and on March 23rd ordered a strike, when four hundred and fifty of respondent's five hundred employees left work. On March 30th respondent announced that its factory was closed indefinitely.

The strike was in effect July 5, 1935, when the National Labor Relations Act was approved, and continued until about July 23rd, when respondent resumed operations at its plant. By August 19th it had received three thousand applications for employment and had reemployed one hundred and ninety of its production employees. By the end of the second week in September respondent had employed a full force. On July 23rd two labor conciliators from the Department of Labor appeared in Terre Haute and were requested by the Union "to try and open up negotiations with the respondent". On that day the conciliators met and conferred with respondent's president, who agreed to meet them with the Scale Committee. Several days later he informed them that he would not meet with them or with the Scale Committee. Later respondent received, but did not answer, letters of the Union of September 20th and October 11th, asking for a meeting to settle the controversy between them.

The Board concluded that on July 23rd the "union represented a majority of the respondent's employees, that it sought to bargain with the respondent, that the respondent refused to so bargain, and that this constituted an unfair labor practice" within the meaning of § 8, subdivision (5) of the Act. It ordered respondent to discharge all of its production employees who were not employed by it on July 22, 1935, to reinstate its employees as of that date, and thereupon to desist from refusing to bargain with the Union as the exclusive representative of respondent's production employees.

Application by the Board for a decree enforcing its order was denied by the Circuit Court of Appeals for the Seventh Circuit, 96 F. (2d) 948, on the ground that as the employees had struck before the enactment of the National Labor Relations Act, in violation of their contract not to strike and to submit differences to arbitration, they did not retain and were not entitled to protection of their status as employees under § 2(3) of the Act. We granted certiorari October 10, 1938, the questions presented with respect to the administration of the National Labor Relations Act being of public importance.

The Board's order is without support unless the date of the refusal to bargain collectively be fixed as on July 23, 1935. The evidence and findings leave no doubt that later, in September, respondent ignored the Union's request for collective bargaining, but as at that time respondent's factory had been reopened and was operating with a full complement of production employees, the refusal to bargain could afford no basis for an order by the Board directing, as of that date, the discharge of new employees and their replacement by strikers. Restoration of the strikers to their employment, by order of the Board, under § 10(c) of the Act, could as a practical matter be effected only if respondent had failed in its statutory duty to bargain collectively at some time after the approval of the National Labor Relations Act on July 5th, and before respondent had resumed normal operation of its factory. The date fixed by the Board was July 23rd, when respondent reopened its factory, and the occasion was the personal interview on that day and a later telephone conversation of respondent's president with the conciliators from the Labor Department, who were not members or official representatives of the Union and who, so far as the testimony discloses, did not then appear to the president to be authorized to speak for the Union.

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In appraising these transactions between the conciliators and respondent's president, it is important to bear in mind the nature and extent of the legal duty imposed upon the employer by the National Labor Relations Act. Section 8(5) declares that it is an "unfair labor practice" for an employer "To refuse to bargain collectively with the representatives of his employees", and §§ 2 and 10(c) give to the Board an extensive authority to order the employer to cease an unfair labor practice and to compel reinstatement of employees with back pay when employment has ceased in consequence of a labor dispute or unfair labor practice. See *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333. While the Act thus makes it the employer's duty to bargain with his employees, and failure to perform that duty entails serious consequences to him, it imposes no like duty on his employees. Since there must be at least two parties to a bargain and to any negotiations for a bargain, it follows that there can be no breach of the statutory duty by the employer—when he has not refused to receive communications from his employees without some indication given to him by them or their representatives of their desire or willingness to bargain. In the normal course of transactions between them, willingness of the employees is evidenced by their request, invitation, or expressed desire to bargain, communicated to their employer.

However desirable may be the exhibition by the employer of tolerant and conciliatory spirit in the settlement of labor disputes, we think it plain that the statute does not compel him to seek out his employees or request their participation in negotiations for purposes of collective bargaining, and that he may ignore or reject proposals for such bargaining which come from third persons not purporting to act with authority of his employees, without violation of law and without suffering the drastic consequences which violation may entail. To put the employer in default here the employees must at least have signified to respondent their desire to negotiate. Measured by this test the Board's conclusion that respondent refused to bargain with the Union is without support, for the reason that there is no evidence that the Union gave to the employer, through the conciliators or otherwise, any indication of its willingness to bargain or that respondent knew that they represented the Union. The employer cannot, under the statute, be charged with refusal of that which is not proffered.

During the eight months preceding the strike respondent had, upon request, entered into negotiations with the Union on some eleven different occasions. Such meetings, always with some known representatives of the Union, were customarily with the Union Scale Committee and on its written request. All negotiations were broken off by the Union by the strike which followed almost immediately its resolutions of March 17th. On July 23rd the strike had continued for about four months, accompanied by picketing, violence and destruction of property, and had culminated, on July 22nd, in a proclamation of martial law. A meeting on June 11th had resulted in no change of attitude on either side. From then until July 23rd no attempt appears to have been made on either side to resume negotiations.

While there was before the Board testimony of the secretary of the Union that on July 23rd he had asked the conciliators to "try and open up negotiations", there was no testimony that respondent or its officers had ever been informed of that fact or that they were advised in any way of the willingness of the Union to enter into negotiations. This was pointedly brought to the attention of the Board and the trial examiner by a motion to strike the testimony of the secretary and that of respondent's president, giving his account of his interview with the conciliators. But the conciliators were not called as witnesses and no attempt was made to supply the omission.

Respondent's president testified that on July 23rd the conciliators asked him if he would meet with them and the Scale Committee; that he replied that he would; that no meeting was arranged and that several days later he called one of the conciliators on the telephone and informed him that he, the witness, "would not have any meeting with him or with the Scale Committee". All else that took place between the conciliators and respondent is left a matter of conjecture.

This testimony, on which the Board relies to support its finding, shows on its face that there was no indication until sometime later than July 23rd of any unwillingness on the part of respondent's president to meet the Union. Furthermore, it contains no hint that the Union at any time after July 5th and before September communicated to respondent its willingness to bargain, or that the conciliators, in asking a meeting and discussing the matter with respondent's president, purported to speak for the Union. The testimony is consistent throughout with the inference, and indeed sup-

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ports it, that the conciliators, so far as known to respondent, appeared in their official role as mediators to compose the long-standing dispute between respondent and its employees; that the employer first consented in advance to attend a meeting, and later withdrew its consent when they had failed for some days to arrange a meeting. Whether in the meantime the Scale Committee or any other representative of the Union was in fact willing to attend a meeting does not appear.

Section 10(e) of the Act provides: ". . . The findings of the Board as to the facts, if supported by evidence, shall be conclusive." But as has often been pointed out, this, as in the case of other findings by administrative bodies, means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred. *Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board*, 301 U. S. 142; *Consolidated Edison Co. of New York v. National Labor Relations Board*, decided December 5, 1938; *Appalachian Electric Power Co. v. National Labor Relations Board*, 93 F. (2d) 985, 989; *National Labor Relations Board v. Thompson Products Inc.*, 97 F. (2d) 13; *Ballston-Stillwater Knitting Co. v. National Labor Relations Board*, 98 F. (2d) 758, 764. Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. "It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. of New York v. National Labor Relations Board, supra*, and it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. See *B. & O. R. R. Co. v. Groeger*, 266 U. S. 521, 524; *Gunning v. Cooley*, 281 U. S. 90, 94; *Appalachian Electric Power Co. v. National Labor Relations Board, supra*, 989.

Judged by these tests or any of them we cannot say that there was substantial evidence that respondent at any time between July 5, 1935, and September, 1935, was aware that the Union desired or sought to bargain collectively with respondent, or that there is support in the evidence for the Board's conclusion that on or about July 25, 1935 respondent refused to bargain collectively with the Union.

Affirmed.

Mr. Justice FRANKFURTER took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 229.—OCTOBER TERM, 1938.

National Labor Relations Board, } On Writ of Certiorari to
vs. } the United States Cir-
Columbian Enameling and Stamping } cuit Court of Appeals
Company, Inc. } for the Seventh Circuit.

[February 27, 1939.]

Mr. Justice BLACK, dissenting.

The Labor Board was given jurisdiction by Congress to hear and weigh evidence and to determine the inferences from it; to make findings of fact; and to issue orders necessary to effectuate the purposes of the National Labor Relations Act. In apt language, Congress limited the power of courts to review the Board's findings by providing in the Act that "The findings of the Board as to the facts, if supported by evidence, shall be conclusive."

I believe that "The inferences to be drawn were for the Board and not the courts,"¹ and that the inferences drawn by the Board were supported by the evidence. Courts should not—as here—substitute their appraisal of the evidence for that of the Board.

The Labor Board, the Federal Trade Commission, the Interstate Commerce Commission, the Securities and Exchange Commission and many other administrative agencies were all created to deal with problems of regulation of ever increasing complexity in the economic fields of trade, finance and industrial conflicts. Congress thus sought to utilize procedures more expeditious and administered by more specialized and experienced experts than courts had been able to afford. The decision here tends to nullify this Congressional effort.

The Labor Board concluded that "On or about July 23, 1935, the company refused to bargain collectively with the Union as the representatives of its employees, or at all," This conclusion is here set aside only because the Court believes the evi-

¹ *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271.

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dence before the Board did not support its particular underlying finding that "It seems clear that . . . [the] president of the respondent, knew that the Union was seeking through the [Federal] conciliators to bargain with the respondent with respect to the settlement of the strike."

Undisputed evidence disclosed that on July 23, 1935, the conciliators—at the express instance of the Union—conferred for three or four hours with the president of respondent; that the only purpose of the conciliators was to arrange a meeting between the company and the Union in order to bring about collective bargaining; that the president agreed with the conciliators to meet the Union and the conciliators at a date to be set; but that several days thereafter (when the company had obtained other employees and was operating under the protection of the militia) the president—again acting for the company—called the conciliators and flatly refused to meet further with them or the Union. The Court finds only a single link missing in the chain of evidence showing that the company refused to bargain with the Union, i.e., that there was no evidence to justify the Board's finding that the president of the company was aware the conciliators had approached the company at the request of the Union. But the "courts cannot pick and choose bits of evidence to make findings of fact contrary to the findings of" an administrative body.² And the story in this record discloses a broad basis for the inference that the company did know it was actually refusing the Union's request.

For thirty-three years prior to July, 1934, the company ran a non-Union plant. About that date, a majority of the employees were organized by an affiliate of the American Federation of Labor. The company first refused to sign an agreement with the Union but did so, July 14, 1934, upon the intervention of the Regional Labor Board functioning under the National Industrial Recovery Act. This agreement was to continue a year, was subject to modification by mutual consent, and provided for arbitration of disputes arising under it. Thereafter, pursuant to the agreement, meetings were held between the Union and respondent and the Union submitted repeated requests and grievances, relating to the "check-off" system, wage increases, the possibility of a closed shop, etc. These were refused and counter grievances of the company

² *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 117; *Federal Trade Commission v. Algoma Co.*, 291 U. S. 67, 73; cf., *Federal Trade Commission v. Keppel & Bro.*, 291 U. S. 304, 314.

were submitted and discussed. In meetings and by mail, the Union continued to submit grievances—that back-pay accrued during shut-downs was owing, that the company was dealing with individual employees and, in March, 1935, that the company by refusing to arbitrate had broken its agreement. March 22, the Union called a strike, the testimony showing that it was called "on account of the company's refusal to honor and abide by the agreement signed before the Labor Board July 14, 1934 . . . [as to] minimum days, wages, and any employee being called out and not used" and because the company had "refused arbitration on this agreement." Thereafter, the company closed its plant, consistently urged individual members of the Union to return to work and desert the Union's efforts—by strike—to obtain collective bargaining, and publicly announced that it would not meet with the members of the Union and that it was willing to take its individual employees back, but "without Union recognition or agreement." June 11, the company did meet with the Union's representatives but insured the impossibility of any successful collective bargaining by reiterating at the outset that the company would not recognize the Union. July 23, the Union asked the conciliators to see the President of the company.

To conclude that the company—through its president—was unaware the conciliators were acting at the instance of the Union, and, therefore, is not to be held responsible for its flat refusal to meet with its employees, is both to ignore the record and to shut our eyes to the realities of the conditions of modern industry and industrial strife. The atmosphere of a strike between an employer and employees with whom the employer is familiar does not evoke, and should not require, punctilious observance of legalistic formalities and social exactness in discussions relative to the settlement of the strike. It is difficult to imagine that—during several hours of conversation between the conciliators and the company's president concerning a future meeting of Union and company—the conciliators refrained from reference to the Union's request that the conciliators arrange such a future meeting. In a realistic view, the company's statement of July 23 to the conciliators, that it would meet with them and the Union, clearly indicated the company's acceptance of the fact that the conciliators were appearing for the Union. The company's declaration to the conciliators, several days later, that it would not meet with the Union or the conciliators,

4 N. L. R. B. vs. Columbian Enameling and Stamping Co., Inc.

equally represents the company's recognition and acceptance of the fact that the conciliators were a means of dealing with the Union.

Not only did the Labor Board find the evidence sufficient to show that the company refused to bargain with the Union on or about July 23, but the court below reached the same conclusion. The rule is well settled that findings of fact concurred in by two lower courts will not "be disturbed unless plainly without support."³ This rule equally applies when an administrative body and a lower court—as here—concur on findings of fact,⁴ and the rule is even more persuasive where, as in the Act creating the Labor Board, it is provided that "The findings of the Board as to the facts, if supported by evidence, shall be conclusive." The majority opinion,⁵ of the Court of Appeals in this case said:

"This conclusion [refusal to enforce the Board's action] does not mean that we approve or uphold the refusal of the respondent to meet the request of the conciliators and enter into negotiations looking toward the settlement of disputes after the employees had quit their employment. Respondent's employees were largely unionized. Under the Act, respondent, when requested to negotiate, was in duty bound to do so. National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1. Instead it lent a friendly ear to unwise counsel wholly out of sympathy with the legislation designed to avoid and settle capital-labor disputes. It erred in its refusal to respect the law and . . . [ignored] the request of those charged with the burdensome task of working out a peaceful solution of what had become a bitter controversy. There is little or no explanation which we can find for their refusal, save an open defiantouting of the law of the land."

Respondent's striking employees remained employees—while on strike—within the meaning of the National Labor Relations Act (Sec. 2(3)) because their work had ceased "as the consequence of . . . [and] in connection with . . . [a] current labor dispute. . . ." The statutory rights of these striking employees could not be destroyed, and respondent could not commit unfair labor practices and then escape liability by reopening the plant with a full complement of non-Union men.

³ General Pictures Co. v. Electric Co., 304 U. S. 175, 178; United States v. Chemical Foundation, 272 U. S. 1, 14; Virginian Ry. v. Federation, 300 U. S. 515, 542.

⁴ Illinois Central, etc., Railroad v. Interstate Commerce Commission, 206 U. S. 441, 466.

⁵ Three judges sat in the court below. One wrote the opinion for the majority; the second judge concurred in the conclusion of that opinion; the third judge dissented but expressly found that there was evidence to support the findings that the company refused to bargain collectively with its employees.

Second. The court below was of opinion that the strike of March 22, 1935, violated the particular provision of the July 14, 1934, contract⁶ with the company that "There shall be no stoppage of work by either party to this contract, pending decision by the Committee of Arbitration." Solely because it believed the Union had violated its contract, the court below declined to enforce the Board's order, and held that the company could not be made responsible for its own violation of the Act.

In this, I believe the court below was in error. A disagreement over the terms of a contract governing employer-employee relations is a labor dispute within the terms of the Act. Such a disagreement can—as it did here—produce industrial strife which the Act was expressly designed to prevent. Had Congress provided that violation of a private contract would deprive employees and the public of the benefits of the law, a different question would be presented. But Congress did not so provide and, in addition, the Union did not violate its contract. It contracted not to strike "pending decision by the Committee of Arbitration" but there was no decision "pending." There was no arbitration pending because the company would not arbitrate. If the contract was broken, it was the company—not the Union—that broke it.

I believe the judgment of the court below should be reversed and that the Board's order should be enforced.

Mr. Justice REED joins in this dissent.

⁶"In any case in which a satisfactory settlement of a dispute arising under this contract cannot be reached, such dispute shall be referred to a Committee of Arbitration composed of two persons selected by the Management, two persons selected by the Union, and fifth person to be selected by these four, who shall reach a decision which shall be final and binding upon both parties to this contract. There shall be no stoppage of work by either party to this contract, pending decision by the Committee of Arbitration."

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